OHIO
CRIMINAL SENTENCING COMMISSION
65 SOUTH FRONT STREET • 5TH FLOOR • COLUMBUS, OHIO 43215-3431 • TELEPHONE: 614.387.9305 • FAX: 614.387.9309

Felony Sentencing in Ohio: Then, Now, and Now What?

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Felony Sentencing in Ohio: Then, Now, and Now What?

Feedback received between December 2022 and February 1, 2023

Organization/Person	Notes: (Not a complete summary of the feedback)
Timothy Young – OPD	Support Indefinite system with narrow ranges and meaningfully guided discretion. Data collection necessary, addresses multiple points in Judge Nichols lived experience, Effective early release mechanisms do not currently exist. Laments that the report was not distributed to workgroup prior to distribution.
Yuera Vetters/Timothy Pierce/Robert Essex-Franklin County Public Defender (Supplement as well)	Opposed to expansion of indeterminate sentencing model, meaningful appellate review process, opposed to expand parole, IN FAVOR of expanded use of uniform templates, specific recommendations for simplify statutes, support expanded diversion, specialty dockets. SUPPLEMENT: Meaningful consideration of youth for homicide offense carrying a life sentence.
Theresa Haire – Montgomery County Public Defender	Oppose expanding indeterminate sentencing, robust appellate review, F3s to F4s good, but no F3 deserves 5 years (or more if indeterminate), against definite minimum, parole eligibility recommendation, support standardization and USE – as long as PSI is still thorough, appeal process for judge who rejects diversion,
Cullen Sweeney – Cuyahoga County Public Defender	Oppose expanding indeterminate sentencing, expand judicial release, appellate review for weighing factors, if low tier F3s become F4s – good, but no low tier F3 should get 5 years, appellate review consecutive sentences, SUPPORT USE and PSI standardization,
Dan Sabol - OACDL	To soon to determine that indeterminate sentencing is working, doesn't like the definite minimum, supports consecutive sentencing modification, supports USE, more defense attorneys in the Commissions endeavors
Lou Tobin – OPAA	Would support some recommendations but overall too vague. Other recommendations not enough information. Doesn't want reorganization to equal decriminalization. Also,

	GA just passed 1000+ page bill – stop moving the target
John Litle	Believes that the proposals are drawn from coastal cities, believes Columbus/Franklin County is a model of what not to do, believes the Commission has been fully progressive captured, believes the entire report is progressive policy, John Litle has his own proposal that is going to be submitted by his representatives – soon.
Commissioner David Painter	Opiate data should be added, Opportunity of inmates to participate in programming limited to under 5 years, F4/F5 drug crimes not presumption (in general nonviolent crimes need to be addressed), address consecutive sentences
Christopher Pagan – Defense Lawyer in Butler County	PSI should be available to appellate counsel, PSI should be available to counsel prior to sentencing date. (see Federal system)
Maureen David	Does not want GA to proscribe what weight to give, don't move discretion from judge to parole board, against definite minimum time, Parole Board – who and how accountable, support reworking of code – more user friendly, thoughts on Nichols lived experience,
Ken Rexford	Concerned with the 3 Branches and giving executive branch too much power, allow RTA and PRC decisions by ODRC to be appealed to trial judge.
Dee Debenport	Revamping felony sentencing out of place, need to deep dive into Columbus City and Franklin County Prosecutor's offices.
Heathe Hall	Complaining about an individual who got 5 years, not responding to the Report directly
Everett Krueger	Commending the staff and roundtable workgroup
Bill Shaul, MD	Need guardrails while retaining judicial discretion, Robust data collection needed, "Participatory Defense" (TED talk-link in email)
Robin Harbage, FCAS, MAAA	Expansion of data collection, reviewed report after hearing Justice Donnelly presentation.
Mary Ann Viveros	Sentencing rules are confusing, result in widely varying sentences, ever increasing prison populations, make information available to judges so they have guidelines for fair sentences that are similar crimes.

David Sheldon – Private Attorney	Adamantly against mandatory minimum sentencing.

Office of the Ohio Public Defender

Timothy Young, State Public Defender

January 31, 2023

Sara Andrews, Executive Director
Ohio Criminal Sentencing Commission
Supreme Court of Ohio
65 South Front Street
Columbus, Ohio 43215

Delivered via email: Sara.Andrews@sc.ohio.gov

Re: Sentencing Roundtable Workgroup Report

Dear Ms. Andrews,

The Office of the Ohio Public Defender (OPD) submits the following comments regarding the Sentencing Roundtable Workgroup's Draft Report ("Report"). The OPD actively participated in the workgroup and made multiple recommendations to improve public safety, increase rehabilitation, and reduce recidivism while protecting the fundamental due process and liberty interests of Ohioans. The Report did not contain the OPD's recommendations, and the agency had no opportunity to comment on the Report prior to its distribution. The Report was directly circulated to the Sentencing Commission and was not distributed to the full workgroup as a body for any input and comment prior to the full distribution. These comments reflect the first opportunity by the OPD to provide input on the recommendations contained in the Report.

The Report does a thorough job in pages 4-44 of documenting spiraling mass incarceration in Ohio, the many legislative efforts over the course of 40 years to alter that trajectory, and our resulting complex and inefficient prison and sentencing system. Notably, absent in the Report is the fundamental reality that the skyrocketing prison population in Ohio does not correlate to any increase in violent crime. In fact, violent crime has declined consistently since the 1980s with Ohio's curve essentially mirrored by national trends.[1]

The fixes proposed in the Report—which include indefinite sentences for F1, F2, and F3 offenses without any release valves below the minimum range in the sentence—will act as an upward ratchet that exacerbates mass incarceration, unless there are meaningful ways to earn reductions through evidence-based programming that address criminogenic factors. That said, the OPD is not opposed to indefinite sentencing. An indefinite sentencing system with narrow ranges and meaningfully guided discretion for

[1] Federal Bureau of Investigation Crime Data Explorer, available at: https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend (accessed January 10, 2023).

imposing terms is one of the main avenues to reduce mass incarceration and improve safety for all Ohioans.

The Report's recommendations regarding mass incarceration are unsuccessful in part because the premise of the main underlying principle appears to be largely unfettered discretion. Instead, what is needed are clear, identifiable, and measurable factors used to determine sentences. These factors should be supported by research and data and be free from the creep of bias and prejudice, unwanted influences that remain so prevalent in our present sentencing system. Instead, the Report defaults to misguided and failed policies of the 1980s including the 'war on drugs.' Modern criminal justice reform rejects these notions and calls for robust data collection and early release mechanisms that are tied to measurable reductions in recidivism.

- **Data collection is necessary to reduce sentencing disparities:** With a citation to *McCleskey v. Kemp,* the Report suggests, incorrectly, that "particular results ought not be measured through social science methods but rather be recognized as a component of moral philosophy circumscribed by due process constraints." Respectfully, the citation to *McCleskey*, a case using data analysis to demonstrate profound racial disparities in the application of the death penalty, demonstrates *why* data is so important to the fair administration of justice. *McCleskey* has been referred to as "the Dred Scott decision of our time" and Justice Lewis Powell, who wrote the decision, expressed great regret about it to his biographer.[2] Simply put, sentencing is not merely the application of subjective moral philosophy. The data in *McCleskey* shows race, a prohibited factor in our justice system, plays a profound role in outcomes. The Report suggests *McCleskey* allows us to continue to ignore race and other illegal factors and hide behind a myth of moral philosophy that allows racism to knowingly continue in our justice system. Refusing to measure and limit the exercise of discretion permits all manner of implicit biases to unintentionally infect sentencing decisions--and the failure leaves us without the data necessary to prove the results of those biases.

- **Broad discretion drives unexplainable and unsupportable disparities:** A theme running through the Report is the need for broad local discretion because of the myth of rural versus urban attitudes. What is being proposed is justice by geography. Justice should be thoughtful, considered, and fair across the State of Ohio. On page 67, the Report submits that previous changes to our sentencing and punishment structure have inappropriately circumscribed local discretion. On page 53, it is offered that discretion is necessary because rural communities value "a constitutional right to social order" while urban communities value "restorative and therapeutic results." Ohio disproportionately incarcerates black people over white people at a rate of 4.8:1.[3] We incarcerate women

[2] Adam Liptak, *New Look at Death Sentences and Race,* The New York Times (April 29, 2008).
[3] U.S. Criminal Justice Data, The Sentencing Project, available at: https://www.sentencingproject.org/research/us-criminal-justice-data/?state=ohio (accessed January 10, 2023).

more frequently than their male counterparts for drug crimes.[4] Geography tells the story of unexplainable differences in the use of the death penalty with urban communities imposing the ultimate punishment far more frequently than rural communities – undermining the entire premise of the 'social order' versus 'restorative and therapeutic results' that are proposed in the Report.

Perhaps most troubling about this narrative is the implication it necessarily includes about victims of crimes. When it is suggested that rural communities value safety more than urban communities, or that rural communities see drug crimes 'differently' – these statements place value, not on acts, but on people. It is unacceptable to suggest that a victim of a home invasion in a city or suburb is less traumatized, less harmed, and is entitled to less justice than if the same exact home invasion occurred in a town or village. Each of Ohio's 88 counties have the exact same authority and power to prosecute felony crimes. The crimes are prosecuted in the name of the State, not the local government. All victims should be assured that Ohio's criminal justice system, regardless of the location of an offense, will have a fair and uniform result.

- **Incarceration for drug use is not an effective response to a health problem:** Drug abuse is a public health problem and addiction is a medical disease. But, instead of addressing drug crimes as a public health crisis, the Report returns to the myth of marijuana as a gateway drug. Study after study finds the most effective use of our dollars regarding drugs is treatment. Yet, we continue to spend billions on interdiction and incarceration, contrary to simple supply/demand economics. As long as there is a demand, there will be a supply – countries that have the death penalty for drug trafficking still have drugs in mass quantities. Reduce demand through treatment and the supply will reduce as well. Unfortunately, drugs will always be a problem but how big that problem is depends on whether we provide treatment and reduce demand or we continue with the revolving door of failure that war on drugs has proven to be.

- **Effective early release mechanisms do not currently exist**: On page 4, the Report advocates for minimum terms that cannot be reduced by early-release mechanisms. On page 54, the Report laments the "myriad of exit ramps over which prisoners can be released from confinement." But, contrary to the Report, current early-release measures do not "compel release and create avenues for appeal:"

    - **Risk reduction**: 48 people were on supervision for a risk-reduction sentence as of July 2022 (see ODRC's 2022 Annual Report, page 37). The only way to get risk reduction is if the sentencing judge imposes it in the sentencing entry, a decision that is already entirely within the judge's discretion.

[4] ACLU of Ohio, On the Basis of Punishment: Women in Ohio Prisons, available at: https://www.acluohio.org/sites/default/files/field_documents/onthebasisofpunishment-womeninohioprisons_2022-0614.pdf (accessed January 10, 2023).

- **80% release**: This program, though authorized by statute, is not a current avenue for release. The Parole Board is not screening individuals and it has only been used anecdotally.

- **Earned credit**: An incarcerated person can currently earn credit of either 10% of their sentence *or* 90 days, whichever is less. Ohio has the lowest earned credit available in the United States.

- **Earned reduction**: There is no data suggesting that anyone has earned a reduction to their sentence under SB 201.

- **There is a political will for early release:** On page 52, the Report suggests, pointing to Issue 1's failure, that there is no political will for early release mechanisms. Undermining the entire premise is the recently passed SB288—a bipartisan omnibus bill. The passage of this bill by Ohio's elected legislators shows an appetite for ensuring that the right people are incarcerated for the right amount of time. SB288 expands earned credit eligibility, reduces the use of a judicial veto of transitional credit to sentences less than a year in length, revives and strengthens 80% release, and expands judicial release. A significant majority of Ohio's General Assembly believes exactly the opposite of the Report –that there is political will for early release mechanisms for incarcerated people who have earned meaningful consideration for release.

In conclusion, it is unfortunate that the Report was not provided to the Workgroup prior to its full distribution so best practices and evidence-based outcomes could be provided in lieu of some of the recommendations that are addressed therein. The OPD respectfully recommends that the process, in the future, for any workgroup report, include steps for a review, consideration of amendments, and vote by the body that worked as part of the Group. Without this input and without any discussion or vote by the workgroup on the Report, it is respectfully suggested that the Report does not reflect a consensus of the workgroup and is not a starting point for legislative reform for sentencing in Ohio.

FRANKLIN COUNTY PUBLIC DEFENDER

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February 1, 2023

Sara Andrews
Director, Criminal Sentencing Commission
65 S. Front St, 5th Floor
Columbus, Ohio 43215-3431

Dear Ms. Andrews:

I along with several members of our staff have reviewed the Sentencing Commissions report and recommendations and below are some of our office's thoughts and concerns as the commission moves forward on this issue. As an initial thought, it seems early for the commission to be addressing this given that we do not know the future of the current indeterminate sentencing model as the Ohio Supreme Court has not issued decisions regarding the constitutionality of the current model (two primary cases before the Court are *State v. Hacker* and *State v. Simmons*). This will not likely be resolved for several months as oral arguments were only recently conducted. Here are some other thoughts concerning the committee's recommendations:

1. Establish a modified and modernized rehabilitative model of criminal sentencing

Our office is opposed to any expansion of the indeterminate sentencing model. Initially, the committee appears to be relying on the conclusion that the "model is flexible and can accomplish a global sense of consistency and proportionality, while retaining the distinction between jurisdictions." The Regan Tokes Act has been in effect for almost four years and there does not appear to be any evidence of this. Additionally, many of the offenders sentenced under the current model have not even reached their presumptive release date.

"The indeterminate model is flexible and can accomplish a global sense of consistency and proportionality, ***while retaining the distinction between jurisdictions***." It is unclear how the indeterminate sentencing scheme "would streamline the sentencing process, reduce errors and ensure fair sentencing." How specifically would this mandate ensure judges are going to sentence more uniformly? (Report at p. 75)

The committee appears to want to maintain some degree of "truth in sentencing" however none of the proposals further that goal and, in fact, move sentencing further away from that concept.

2. Seriousness and recidivism factors, contained in R.C. 2929.12, to be weighted to provide context and distinction to sentences.

The committee puts this forward in the name of reducing sentencing disparities between similarly situated defendants. This idea appears to require judges to place on the record what factors the court is assigning greater weight. Again, the committee is trying to return to something (judicial factfinding) that has been gone from the courtroom for years. Again, this is a solution that the committee is advancing with no clear link to the intended result (reducing sentencing disparities.)

If the committee wishes to advance this idea, thought should be given to establishing a meaningful appellate review process including review of sentencing disparities in that that is the goal of the recommendations.

3. Expand indeterminate sentencing to apply to felonies of the third degree and eliminate the bifurcated structure of felonies of the third degree.

Again, the recommendation to expand the use of indeterminate sentences is premature in that, as stated above, there is no evidence yet that the current model will achieve the desired goals. Our office is opposed to any expansion of the indeterminate sentencing model.

4. Implement a definite minimum time that a prisoner must serve before release options become available.

Several years ago, SB2 got rid of most indeterminate sentences all in the name of "truth in sentencing." While we are definitely moving in the opposite direction, the committee wants to keep some aspects of truth in sentencing by such measures as imposing a definite minimum time.

This seems unnecessary and is an example of trying to retain "truth in sentencing" where in reality, the trajectory is to move to more indeterminate sentences. Recommendations one and three above both aspire to move to more use of the indeterminate model while recommendation six below even expands the responsibility of the parole system to implement the indeterminate model. Judges already have the power to accomplish this through the judicial release process. Additionally, judges have a say in whether the prison system releases an offender while under his/her sentence.

5. Modify consecutive sentence statutes to provide proportionality more effectively between similarly situated offenders.

This is another example of a recommendation with no clear link to achieving the desired goal of achieving proportionality and reducing sentencing disparities. At this point, judges are no longer required to place their reasons for imposing consecutive sentences. They need only to place the statutory language on the record; indeed, at present compliance only requires that the sentencing entry indicate the court has considered the purposes and principles of sentencing. Again, if the goal is to truly achieve the goal of reducing sentencing disparities, there must be a robust appellate review process to ensure that the reforms are meaningful.

6. Expand responsibility of parole system to implement the proposed indeterminate model of sentencing.

Again, any discussion regarding expanding parole is premature in that there is no evidence that the indeterminate sentencing is achieving its stated goals.

Our office is opposed to any expansion of the parole system.

7. Support the Commission's efforts to promote the adoption of uniform entry templates.

We are in favor of this.

8. Standardize Presentence Investigation Reports

Generally speaking this Office is not opposed to this. However, recommendation raises the question as to the specific matters which will be included in such reports. Standardization should at a minimum include such categories and investigation into the defendant's physical health, mental health, substance abuse history, facts of the particular offense, family history, employment history, rehabilitative pathways, position of the parties, and sentencing recommendations. Standardized Presentence Investigation Reports should also include standardized criteria regarding the probation department's sentencing recommendations which should be made accessible to counsel. Provision should also be made for the defendant to object to what is contained in the Report similar to that in the federal system.

9. Reorganize and Simplify Criminal Statutes

Uncertainty abounds with respect to this recommendation. Though this appears to be a goal worth pursuing, we share the concern of other public defender agencies that this recommendation should not translate into harsher sanctions for Ohioans. Further, we recommend that simplification include the enactment of statutes recognizing greater rights for Ohioans, including a statutory right to meet one's accusers face to face by requiring a witness unavailability requirement consistent with the Supreme Court of Ohio decisions *State v. Storch*, *State v. Summons* and *State v. Wing* (specifically, to allow the admission of hearsay the State

must first demonstrate the witness is unavailable to testify, a paradigm not unlike that originally called for in the United States Supreme Court decision *Ohio v. Roberts*), a statutory suppression requirement for violations of the search and seizure provisions of the Fourth and Fourteenth Amendments of the United States Constitution and Article I, Section 14 of the Ohio Constitution, a statute eliminating jury instructions permitting courts to comment on specific evidence by informing the jury it may, but is not required, to draw certain specific inferences from the accused's conduct, and/or an amendment to R.C. 4511 that the person suspected of OVI be informed in writing that a refusal to submit to a chemical test of his blood, breath, or urine can be construed and commented upon at a trial that this is indicia of the suspect's guilt.

10. Have an Agency Clearinghouse for Professional Notifications

We are in favor of this recommendation and support the comments submitted by the Cuyahoga County Public Defender as to this recommendation.

11. Expand the Use of Diversion Programs and Specialized Dockets

We are in favor of this recommendation for the reasons submitted by the Cuyahoga County Public Defender. We request that the prosecutor's decision denying diversion be subject to objections submitted to the trial judge by the defense, the opportunity for a contested hearing where testimony and evidence may be submitted, and the trial judge's decision affirming the prosecutor's recommendation be reduced to a formal decision and entry explaining why diversion is not appropriate which will be denominated a final appealable order subject to review by the court of appeals.

12. Address the Drug Epidemic

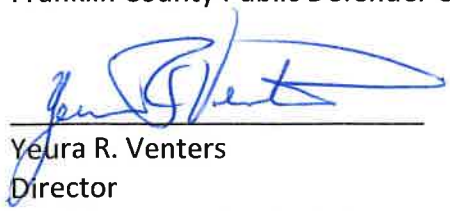
We are in favor of this recommendation. We recommend the enactment of statutes that will increase the number of court personnel to assist in ameliorating this epidemic, including more outpatient facilities, more inpatient facilities, and the employment of more social workers and drug counselors. There should also be legislation calling for more facilities with professional staff to address dual diagnosis persons: individuals with both a substance abuse problem and mental health challenges.

Respectfully submitted,

Robert Essex
Assistant Franklin County Public Defender
Appellate Division

Timothy E. Pierce

Chief, Appellate Division
Franklin County Public Defender Office



Yeura R. Venters
Director
Franklin County Public Defender Office

February 1, 2023

Ohio Criminal Sentencing Commission
Supreme Court of Ohio
Attn: Ms. Sara Andrews
65 South Front Street/5th Floor
Columbus, OH 43215-3431

RE: Supplement to the Franklin County Public Defender Office's Comments Regarding the Ohio Criminal Sentencing Commission Recommendations/ Number 9/Reorganize and Simplify Criminal Statutes

Dear Ms. Andrews:

The Franklin County Public Defender Office respectfully submits the following supplement to its comments previously submitted today, February 1, 2023, regarding Recommendation Number 9, "Reorganize and Simplify Criminal Statutes:"

The Franklin County Public Defender Office further submits that Ohio criminal statutes be reorganized and simplified by the enactment of legislation that would allow sentencing courts to meaningfully consider an offender's youth when punishing a defendant for a homicide offense carrying a possible life sentence when the homicide had been committed when the defendant was a juvenile. "Meaningful consideration" means the court would have the discretion to impose a sentence that the offender's youth warranted. The court would not simply be limited in imposing a mandatory sentence of life with or life without parole, as the current murder and aggravated murder statutes require. This recommendation is based upon the Supreme Court of Ohio's recognition in *State v. Patrick*, 164 Ohio St.3d 309 (2020) and *State v. Morris*, _Ohio St.3d_, 2022-Ohio-4609 that the court's inability to meaningfully take into the offender's youth violates the cruel and unusual punishment clauses of the federal and Ohio constitutions. The present penalties of murder and aggravated murder require that the court impose a

sentence of life with or life without parole and do not allow for the sentence to be tempered by the fact the homicide may have been committed when the defendant was a juvenile.

Respectfully submitted,

Timothy E. Pierce
Chief, Appellate Division
Franklin County Public Defender Office

Robert Essex
Assistant Franklin County Public Defender
Appellate Division
Franklin County Public Defender Office

Yeura R. Venters
Director
Franklin County Public Defender Office

Law Office of the Public Defender

Montgomery County, Ohio

February 1, 2023

Sara Andrews
Director, Criminal Sentencing Commission
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Re: Sentencing Commission Recommendations

Dear Ms. Andrews:

Thank you for the opportunity to comment on the Sentencing Commission recommendations set forth in the Commission's draft report, "Felony Sentencing in Ohio: Then, Now, and Now What?" The Commission's draft report represents a key step in having a continuing discussion about how to address the future of sentencing in Ohio.

Recommendation #1: Expand indeterminate sentencing.

I oppose expanding indeterminate sentencing. My objections follow.

Indeterminate sentencing is neither transparent nor reviewable. When a defendant, with counsel, faces a judge for sentencing, both parties offer particularized arguments for a determinate sentence, and a decision is rendered that oftentimes is accompanied by the judge's reasons for imposing that sentence. A defendant goes to prison knowing why they are there, and for how long. Entrusting the decision to the parole board lacks this type of transparency and defendants may know little more than they were released, or they were "flopped."

Indeterminate sentencing based on the Reagan Tokes model will likely increase prison crowding and increase the amount of time served by the prison population. I would strongly suggest that Ohio refrain from expanding indeterminate sentencing until we see the extent to which the sentences given pursuant to Reagan Tokes are being extended by the parole board pursuant to Reagan Tokes' criteria and procedures. I suspect that we will learn that Reagan Tokes has significantly increased prison terms, terms that were not likely intended by the sentencing judges.

If the Reagan Tokes presumptions of release are removed in favor of a "traditional" parole system but judges are free to choose a minimum term from

the current range of sentences for that level of felony, then overcrowding will be even worse. Judges will still pick the number they believe the defendant deserves and the "tail" will go up from there.

I am sensitive to the need for incentives for good prison conduct and believe that those incentives can lead to actual rehabilitation. To that end, I would suggest that the same types of good-time incentives available for defendants serving nonmandatory sentences should be expanded to mandatory sentences, and the incentives for nonmandatory sentences should be increased. This will encourage prisoners to take positive steps while in prison while still giving them a sense of certainty that is not available when the parole board is determining a prisoner's fate. I also believe that eligibility for judicial release should be expanded to include, some if not all, offenses where mandatory time is presently required. This could be accomplished by either reducing the number of offenses that carry mandatory prison time or continuing to require the imposition of a prison sentence, but only requiring the minimum term to be mandatory. In other words, where prison is mandatory in an F-2 drug case, a judge could impose a five-year sentence. The defendant would then be required to serve two years and, under current law, 180 days before he was eligible for judicial release.

The Report describes Ohio's pre-S.B. 2 parole system as a rehabilitative model and its post-S.B. 2 system as retributive, but these characterizations are too simplistic. Our office has seen too many clients be refused parole long after they were threats to society. Equally, we know of defendants who are subject to lengthy periods of supervision, ultimately returned to prison for technical violations to their conditions of parole. For those individuals serving pre-S.B. 2 sentences, to characterize Ohio's parole system as "rehabilitative" is, at best, a misnomer. There is a reason why approximately one-third of our nation's State penal systems as well as the federal system have eliminated parole.

Based upon decades of experience as a defender, I strongly oppose returning to a system that leaves unfettered discretion to an Executive Branch parole board.

Recommendation #2: Weighting the R.C. §2929.12 sentencing factors.

While my initial reaction was to favor this recommendation, I am concerned as to how the recommendation would be implemented. A purely qualitative ranking where "the court shall consider the following factors in the order of importance set forth below" is too vague. One judge may consider the first factor as twice as important as the second, while another may consider the first factor as ten percent more important than the second, and so on.

On the other hand, a quantitative ranking whereby judges are required to attribute a particular amount of weight to a particular factor will put us into a federal-guidelines-type grid system. That seems too restrictive on judicial discretion and invites issues under *Blakely v. Washington,* 542 U.S. 296 (2004) and *United States v. Booker,* 543 U.S. 220 (2005).

One possibility would be to explore ways to employ a qualitative system with robust appellate review. Appellate review was one of three linchpins to the S.B. 2 sentencing system (the other two being the establishment of sentencing considerations and presumptions, respectively). While the sentencing considerations remain (although the extent they are followed varies from judge to judge), the presumptions were eradicated by *State v. Foster,* 109 Ohio St.3d 1 (2006) and appellate review has eroded considerably as a result of a series of Ohio Supreme Court decisions. E.g., *State v. Jones,* 163 Ohio St.3d 242 (2020). Legislation that would revive appellate review should go hand in glove with a ranking of the R.C. §2929.12 factors.

Recommendation #3: Indeterminate sentencing for F-3s and elimination of the two-tiered approach to F-3s.

My previous comments about indeterminate sentencing already address its applicability to third-degree felonies. While reducing some F-3s to F-4s is a sound idea, none of the current F-3s deserve five years of imprisonment (or possibly more if indeterminate F-3 sentences are created). I am also concerned that there will be substantial resistance to reclassifying lower-tier F-3s as F4s.

Recommendation #4: Implement a definite minimum time to be served.

At the time they impose sentence, judges know how much jail time credit a defendant already has accrued, and judges have control over whether they will allow early release on the basis of good time credits or judicial release. Formalizing this process by requiring a judge to announce in court at the time of sentencing that "the defendant cannot be released from prison for at least 3 years," unnecessarily restricts judicial discretion before a judge can see how a defendant is progressing in prison. It also requires a pronouncement of a minimum at what can be a fraught moment in open court. Allowing judges and the other stakeholders in the system to have the benefit of reflection that comes with the current practice is more conducive to a just outcome that advances the goals of sentencing with the minimum expenditure of resources.

Recommendation #5: Reform consecutive sentences to advance proportionality.

Proportionality in sentencing is an admirable goal but cannot be achieved without meaningful appellate review – which goes far beyond simply checking to see if all the requisite findings for consecutive sentences have been made. When S.B. 2 was enacted, consecutive sentences required both findings and on-the-record reasons for those findings. I support codifying the requirement that judges provide reasons for consecutive sentences. The Ohio Supreme Court's recent decision in *State v. Gwynne*, __ Ohio St. 3d __, 2022-Ohio-4607, constitutes a positive step in the direction of more robust appellate review of consecutive sentences. It was a closely divided decision, however, and three members of the Court took a different view regarding the existing statutory language related to reviewing consecutive sentencing. Legislation should be adopted to clarify that the majority's interpretation was correct and build upon that foundation by requiring trial courts to provide a reasoned explanation for the number of consecutive sentences imposed.

If indeterminate sentencing is going to remain or be expanded, then a cap by which every defendant must be considered for parole is advisable. Rather than have a single figure as the maximum time before parole must be considered, I recommend varying the cap based on the highest level of offense and capping the minimum time for parole eligibility at 50 percent more than the maximum sentence for that offense level regardless of the number of consecutive sentences imposed. For example, if the highest level of offense is an F-2 (regardless of what sentence is actually imposed for the F-2 offense), then the cap would be twelve years.

Recommendation #6: Expand the parole system.

In that I am opposed to expanding parole, I am not in favor of this recommendation. Also, I strongly suspect that doing so would increase prison overcrowding.

Recommendation #7: Adopt uniform entry templates.

We have uniform entry templates here in Montgomery County. I support this recommendation if it provides better information and promotes transparency.

Recommendation #8: Standardize presentence investigative reports.

While I do not have strong feelings on the issue, I am concerned that any standardization must be accomplished without having a chilling effect on generating a thorough PSI.

Recommendation #9: Reorganize and simplify the Criminal Code.

This is another recommendation that seems to be an excellent idea, but could have unintended consequences. So long as Ohio refrains from a grid-type sentencing guidelines approach to sentencing, it is important that meaningful distinctions between offenses be codified, even at the expense of complication. For example, the federal system has a simplified approach to bank fraud whereby it is illegal to defraud a financial institution or fraudulently obtain money from a financial institution. 18 U.S.C. §1344. But the sentence, which can be up to 30 years regardless of how much money is obtained, is largely determined by the United States Sentencing Guidelines, which provide that the amount of the loss is significant to the actual punishment. In contrast, in Ohio, where we do not use sentencing guidelines, fraud offenses have codified loss amounts that determine the level of offense.

Recommendation #10: Have an agency clearinghouse for professional notifications.

I am in favor of this recommendation. I suggest that part of the agency's responsibilities include providing public notice to educate the public about the impact that certain crimes will have on professional licensing.

Recommendation #11: Expand the use of diversion programs and specialized dockets.

I am in favor of this recommendation. With respect to diversion programs, judges should be required to set forth reasons if they reject a prosecutor's recommendation to place a defendant on diversion and the judge's decision to reject placement on diversion should constitute a final and appealable order. This will reduce arbitrary rejections of diversion. Additionally, the county prosecutor's guidelines for diversion should be available to stakeholders. This will ensure that diversion is appropriately and fairly offered to individual citizens.

I also am not opposed to the expansion of specialized dockets. The Montgomery County Common Pleas Court has specialized dockets that my office staffs, including Drug Court, the Mental Health Docket, and Veterans Court. We have had great outcomes for our clients in these endeavors.

Recommendation #12: Address the drug epidemic.

We support further discussion of this important topic and are more than happy to provide the insights of our attorneys and social workers who are on the front lines in these matters.

Conclusion

Please do not hesitate to contact me if further information is desired. Thank you for your consideration.

Sincerely,

LAW OFFICE OF
THE PUBLIC DEFENDER

Theresa G. Haire
Public Defender, Director

CUYAHOGA COUNTY OFFICE OF THE PUBLIC DEFENDER
Chief Public Defender – Cullen Sweeney

February 1, 2023

Sara Andrews
Director, Criminal Sentencing Commission
65 S. Front St., 5th floor
Columbus, OH 43215-3431
Sara.Andrews@sc.ohio.gov

Re: Sentencing Commission Recommendations

Dear Ms. Andrews:

Thank you for the opportunity to comment on the Sentencing Commission recommendations set forth in the Commission's draft report, "Felony Sentencing in Ohio: Then, Now, and Now What?" The Commission's draft report represents an important step in having a continuing discussion about how to address the future of sentencing in Ohio.

Recommendation #1: Expand indeterminate sentencing.

I am not in favor of expanding indeterminate sentencing without there being more empirical evidence that a parole system would stem the excessive sentences that I agree are prevalent in Ohio. My reservations are based, in significant part, on the following.

Indeterminate sentencing is neither transparent nor reviewable. When a defendant, with counsel, faces a judge for sentencing, everyone knows what is being considered, arguments are made, and a decision is rendered that oftentimes is accompanied by some enunciation of the judge's reasons for imposing that sentence. A defendant goes to prison knowing why they are there, and for how long. The closed door decision of the parole board lacks this type of transparency and defendant may know little more than they were released or they were "flopped."

Indeterminate sentencing based on the SB 201 (Reagan Tokes) model will not relieve prison crowding and is likely to increase the amount of time served. A key consideration should Ohio further expand indeterminate sentencing is determining the minimum sentence to be served before parole eligibility. Under SB 201, judges are imposing the same sentences they previously imposed and we are waiting to see the extent to which DRC will increase those sentences. In other words, SB 201 is an elevator that only goes up. If SB 201 becomes the model for adding parole to intermediate and/or lower-level felonies, I am opposed.

And if the SB 201 presumptions of release are removed in favor of a "traditional" parole system that parallels SB 201's sentencing ranges, our sentencing system will be even worse. Given discretion to pick a minimum term of years in an indeterminate system, judges will still pick the number they believe the defendant deserves and the tail will go up from there.

If, on the other hand, the new parole system reduces the minimum term for the various offense levels and requires the sentencing judge to choose from available ranges of punishment that include significantly lower minimum terms (e.g., lowering the F-1 minimum to 18 months as part of a range of 18 months to 8 years), then judges will have diminished control over the actual length of sentence a defendant will serve. I can see where this may help level sentencing disparities and could decrease our prison population. But I am skeptical that the General Assembly will support a crime bill that puts legislators in the position of having to support the possibility that a violent offender who currently is guaranteed to be imprisoned for three years on an F-1 could be released sooner for that same offense.

At the same time, I am sensitive to the need for incentives for good prison conduct. To that end, I believe the same types of good-time incentives available for defendants serving nonmandatory sentences should be expanded to mandatory sentences, and the incentives for nonmandatory sentences should be increased. This will encourage prisoners to take positive steps while in prison while still giving them a sense of certainty that is not available when the parole board is determining a prisoner's fate. And the availability of postrelease control helps to ensure that the person who is released early because of good conduct will be able to keep up the good work once released.

I also believe that eligibility for judicial release should be expanded to include, some if not all, offenses where mandatory time is presently required. This could be accomplished by either reducing the number of offenses that carry mandatory prison time, or, continuing to require the imposition of a prison sentence, but only requiring the minimum term to be mandatory. For example, where prison is mandatory on an F-2 drug case, a judge could impose a five-year sentence. The defendant would then be required to serve two years and an additional 180 days before the defendant was eligible for judicial release on the remaining three years of the five-year sentence.

While Ohio's pre-S.B. 2 parole system has been described as "a rehabilitative model," I disagree with this bright-line description. This Office has seen too many defendants who were no longer threats to society languish for years in prison, unable to obtain parole. And we also have seen too many defendants who remain entangled in lengthy periods of supervision and return to prison on technical violations. As a result, I cannot embrace "rehabilitative" as an apt adjective for Ohio's parole system. And I cannot favor returning to a system that leaves tremendous discretion in the hands of an Executive Branch parole board – at least not until there is further evidence, not only of what is wrong with our current sentencing scheme but of how a return to a parole system will be effective in reducing the prison population.

Recommendation #2: Weighting the R.C. 2929.12 sentencing factors

On its face, this is a good idea. My concern is how to implement it. A purely qualitative ranking where "the court shall consider the following factors in the order of importance set forth below" is too vague. One judge may consider the first factor as twice as important as the second, while another may consider the first factor as ten percent more important than the second, and so on.

On the other hand, a quantitative ranking whereby judges are required to attribute a particular amount of weight to a particular factor will put us into a federal-guidelines-type grid system. That seems too restrictive on judicial discretion and invites issues under *Blakely v. Washington,* 542 U.S. 296 (2004) and *United States v. Booker,* 543 U.S. 220 (2005).

One possibility would be to explore ways to employ a qualitative system with robust appellate review. As you know, appellate review was one of three linchpins to the S.B. 2 sentencing system (the other two being the establishment of sentencing considerations and presumptions, respectively). While the sentencing considerations remain (although the extent they are followed is unclear at best), the presumptions were eradicated by *State v. Foster*, 109 Ohio St.3d 1 and appellate review has eroded considerably in light of a series of Ohio Supreme Court decisions. E.g., *State v. Jones,* 163 Ohio St.3d 242 (2020). Legislation that would revive appellate review should go hand in glove with a ranking of the R.C. 2929.12 factors.

Recommendation #3: Indeterminate sentencing for F-3s and elimination of the two-tiered approach to F-3s.

My previous comments about indeterminate sentencing already address its applicability to third-degree felonies.

The elimination of the two tiers of F-3s is an idea where the devil is in the details. If the current low-tier F-3s are reduced to F-4s, I have no objection to eliminating the low-tier. But none of the current low-tier F-3s are deserving of five years of imprisonment (or possibly more if indeterminate F-3 sentences are created). That is precisely why the tiers were created in the first place. However, if the low-tier is eliminated, I am concerned that there will be substantial resistance to reclassifying low-tier F-3s as F4s.

Recommendation #4: Implement a definite minimum time to be served.

In large part, this already exists. At the time they impose sentence, judges know how much jail time credit a defendant already has accrued and judges have control over whether they will allow early release on the basis of good time credits or judicial release. Formalizing this process by requiring a judge to announce in court at the time of sentencing that "the defendant cannot be released from prison for at least 3 years," unnecessarily restricts judicial discretion before a judge can see how a defendant is progressing in prison. It also requires a

pronouncement of a minimum at what can be a particular emotional moment in court. Allowing judges and the other stakeholders in the system to have the benefit of reflection that comes with the current practice is more beneficial to a just outcome that advances the goals of sentencing with the minimum expenditure of resources.

Recommendation #5: Reform consecutive sentences to advance proportionality.

No one should be opposed to better proportionality. The problem is how to achieve it. I believe the most important step is to enact legislation that enables meaningful appellate review – which goes far beyond simply checking to see if all the requisite findings for consecutive sentences have been made. When S.B. 2 was enacted, consecutive sentences required both findings and on-the-record reasons for those findings. I support codifying the requirement that judges provide reasons for consecutive sentences. The Ohio Supreme Court's recent decision in *State v. Gwynne*, __ Ohio St. 3d __, 2022-Ohio-4607 (reconsideration motion pending), constitutes a positive step in the direction of more robust appellate review of consecutive sentences. It was a closely divided decision, however, and three members of the Court took a different view regarding the existing statutory language related to reviewing consecutive sentencing. Legislation should be adopted to clarify that the majority's interpretation was correct and build upon that the foundation by requiring trial court's to provide a reasoned explanation for the number of consecutive sentences imposed.

If indeterminate sentencing is going to remain or be expanded, then a cap by which every defendant must be considered for parole is advisable. Rather than have a single figure as the maximum time before parole must be considered, I recommend varying the cap based on the highest level of offense and capping the minimum time for parole eligibility at 50 percent more than the maximum sentence for that offense level regardless of the number of consecutive sentences imposed. For example, if the highest level of offense is an F-2 (regardless of what sentence is actually imposed for the F-2 offense), then the cap would be twelve years.

Recommendation #6: Expand the parole system

In that I am opposed to expanding parole, I am not in favor of this recommendation.

Recommendation #7: Adopt uniform entry templates

I strongly support this recommendation as it will provide better information and promotes transparency.

Recommendation #8: Standardize presentence investigative reports.

While I do not have strong feelings on the issue, I am concerned that a standardized report, if it creates more work for the preparing probation officer, might cause judges not to utilized PSIs. The PSI is important enough that any standardization must be accomplished without having a chilling effect on generating the PSI to begin with.

Recommendation #9: Reorganize and simplify the Criminal Code.

This is a recommendation that, while laudable, could be fraught with unintended consequences. So long as Ohio refrains from a grid-type sentencing guidelines approach to sentencing, it is important that meaningful distinctions between offenses be codified, even at the expense of complication. For example, the federal system has a simplified approach to bank fraud whereby it is illegal to defraud a financial institution or fraudulently obtain money from a financial institution. 18 U.S.C. 1344. But the sentence, which is codified as being up to 30 years regardless of how much money is obtained, is largely determined by the United States Sentencing Guidelines where the amount of the loss is significant to the actual punishment. In contrast, in Ohio, where we do not employ such sentencing guidelines, fraud offenses have codified loss amounts that determine the level of offense.

Recommendation #10: Have an agency clearinghouse for professional notifications.

I am in favor of this recommendation. I suggest that part of the agency's responsibility include providing public notice to educate the public about the impact that certain crimes will have on professional licensing.

Recommendation #11: Expand the use of diversion programs and specialized dockets.

I am in favor of this recommendation. With respect to diversion programs, judges should be required to set forth reasons if they reject a prosecutor's recommendation to place a defendant on diversion and the judge's decision to reject placement on diversion should constitute a final and appealable order. This will ensure that judges not arbitrarily reject diversion.

I also support the expansion of specialized dockets. The Cuyahoga County Common Pleas Court has a number of specialized dockets that we staff, including Drug Court, Mental Health Court, and Veterans Court. We have had great success for our clients in these endeavors.

Recommendation #12: Address the drug epidemic

We support further discussion of this important topic and are more than happy to provide the insights of our attorneys and social workers who are on the front lines in these matters.

Conclusion

Please do not hesitate to contact me if further information is desired. Thank you for your consideration.

Sincerely,

/s/ Cullen Sweeney
Cullen Sweeney
Chief Public Defender

The Ohio Association of Criminal Defense Lawyers

Amy Nicol, Executive Director
Columbus

Dear Commission Members,

My name is Dan Sabol, and I am writing on behalf of the Ohio Association of Criminal Defense Lawyers. Thank you for sharing the initial report—we have distributed it amongst our members and have received a substantial amount of feedback. We are cognizant that this is a preliminary report and there is much work to do; but we did want to take the opportunity to share our general thoughts on the dozen subjects that have been highlighted:

1. **Establish a modified and modernized rehabilitative model of criminal sentencing:** The report references the need for a more straightforward range of sentences, but with the possible exception of a mandatory minimum sentence for certain felonies (discussed later), we are unclear as to what a proposed straightforward range of sentences would specifically entail.

2. **Seriousness and recidivism factors to be weighted to provide context and distinction to sentences:** Transparency is always a good thing, and more information on the record to explain a given sentence is wise. But there are some questions regarding this process:
    - Are the individual sentencing factors going to be assigned different weight or are judges going to simply explain which factors they gave more weight to?
    - Does this change anything regarding the sentence judge should pass, or is it simply judges journalizing their thinking in applying our already instituted sentencing scheme?
        i. If there is no codified change to how they are to be weighed, does anything really change other than a judge stating they gave factors more or less weight? Doesn't that happen already?
    - If the main concern is perceived sentencing disparity, the real issue is being ignored—some judges are simply inclined to give much harsher sentences, while others are prone to be more lenient. It is obvious to all who practice in multiple jurisdictions that it is judicial philosophy as opposed to consideration sentencing

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factors in individual cases which leads to apparent sentencing disparity between similarly situated offenders in different counties.

3. **Expand indeterminate sentencing to apply to F3s and get rid of 9-36 month F3s:** The stated advantage expanding indeterminate sentencing is reaping the benefits of SB201 for F3s. Are we sure indeterminate sentencing is beneficial in the first place? Is there any data to support this? It is too early to discern whether indeterminate sentencing has done any good at this point. We believe expanding indeterminate sentencing under the assumption that SB201 will prove beneficial before seeing any actual results is unwise.

   Further, our prison system is still—perpetually—filling over the brim. Is increasing prison sentences for F3s really in our best interests? Is there any data to show how these changes will impact the prison population and ODRC's ability to care for the population? How much will this cost, and will funds be given?
   Some 9–36-month F3s would be re-classified as F4s. How many? Which ones?

   Finally, "truth in sentencing" is a common refrain throughout the Commission's report. But truth in sentencing is through the eye of the beholder. When it comes to indeterminate sentencing, there is little "truth" to an inmate who faces an uncertain release date. This problem is inherent with indeterminate sentencing and is further complicated by an opaque review system that is largely untested to this point. There needs to be a transparent process with meaningful review for the imposition of additional prison time when the stated sentence has been served.

4. **Implementing a definite minimum time that a prisoner must serve before release options become available:** Is gutting judicial release really a good idea? Implementing definite minimum prison sentences within a standard sentencing range would strip sentencing tools away from the trial court—forcing a decision between a local sanction and 2/3 years of mandatory time when they may have been inclined to give a four-year sentence and shock them out in six months. Are we sure the stick of indeterminate sentencing is more effective to induce rehabilitation and good behavior in prison than the carrot of judicial release or other early release options?

   Finally, is the proposed definite minimum sentence just for F1s and F2s? This is implied but not specifically stated.

5. **Modify consecutive sentencing to provide greater proportionality between similarly situated offenders:** This is a fantastic idea to ensure proportionality amongst similarly situated offenders who are given wildly different sentences.

6. **Expand responsibility of the parole system:** Resolving issues of inconsistency and lack of transparency within the parole system is a worthwhile endeavor. First, are there any specific ideas as to how this is going to be accomplished? Further, it is noted that the parole system will help accomplish rehabilitation in the new indeterminate system. How? What role, if any, will the parole system have in determining a prisoner's release

under SB201? Or is this just in reference to proposed consecutive sentencing changes previously discussed?

7. **Promote the adoption of uniform entry templates:** Makes sense.

8. **Standardized presentence reports:** Standardization of PSIs is a good idea, at least on the surface. However, brief or waived PSIs on cases where parties agree community control is a foregone conclusion are common. Will a thorough PSI need to be conducted on every case? If so, this may stress resources, particularly in heavy-volume courts. Will additional funding and resources be provided?

9. **Reorganize and simplify criminal statutes:** The code should be simpler and easier to understand. We agree. Are there any specific changes or procedures suggested, save the Sentencing Commission being expressly authorized to review potential legislation?

10. **Authorize an existing or new agency to handle professional notifications:** Makes sense.

11. **Expansion of diversion programs and specialized dockets:** Expanding resources and increasing involvement in diversion programs and specialized dockets is a worthwhile pursuit. We agree that inconsistent use of diversion programs is a problem and forecloses opportunities to some citizens that are afforded to others. Further, we agree additional research to evaluate how to best use resources in these programs is important and necessary. We also submit that accessibility to specialized dockets should be expanded and be made available to all counties.

12. **The drug epidemic in Ohio:** This is an extraordinarily complex problem, and we understand it is too large for the Commission to tackle now. The Commission did note that guidance is needed from General Assembly regarding addiction, such as "is it a public health concern, a criminal offense, or mental health issue?"

    We do not believe the Commission will receive a clear answer from the Assembly that neatly fits into one of these categories—the drug epidemic will not be solved by mechanically categorizing the drug epidemic as a public health, mental health, *or* criminal offense. The drug epidemic touches on all these issues without exclusion. Through research and validated study, we should discern the most effective way to address 1) what is clearly a current public health issue, 2) assist the many people using drugs that are affected by mental health issues, and then 3) solicit guidance from the legislature as to whether currently categorized drug crimes should be recodified.

We appreciate the Commission taking the time to read and consider our thoughts and concerns with the preliminary report. One final suggestion posited by many of our members is the inclusion of more defense attorneys in the Commission's endeavors. We know—not surprising that a group of defense lawyers believes they should have a few more seats at the table. But our members—working in rural and urban areas in every corner of the state—are uniquely situated to address more than how to recodify statutes and formulate practices. We can also

inform regarding how current laws are impacting Ohio's accused citizens and their families and can further offer unique perspective on real-world implications of any proposed changes.

If there is anything we can do to be of assistance to the Commission, please let us know. We are ready and willing to lend our support.

Yours,

Dan Sabol
President, OACDL

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January 31, 2023

Sara Andrews
Director, Criminal Sentencing Commission
65 S. Front St., 5th floor
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RE: Felony Sentencing in Ohio: Then, Now, and Now What

Director Andrews –

I write today to provide what comments are possible on the "purposefully general" recommendations contained in the Felony Sentencing in Ohio: Then, Now, and Now What report of the Sentencing Commission's Sentencing Roundtable Workgroup.

While theoretically there are recommendations in the report that we could support, like recommendations three, four, ten, and eleven, it is exceedingly difficult to comment on many of the recommendations, including the ones we could support, because there is nothing to speak of to comment on other than extremely broad concepts that lack substance. Chief among these is recommendation twelve that "The drug epidemic in Ohio needs special attention to ultimately address a solution." This amounts to nothing more than a recommendation to eventually come up with a recommendation, but only if the General Assembly provides some sort of guidance. Nevermind that both the public and the General Assembly have provided guidance on this issue through the overwhelming defeat of State Issue 1 in 2018 and Senate Bill 3 in the 133rd General Assembly, and the numerous bills that have been enacted in recent memory expanding treatment options and record sealing/expungement for drug addicted offenders.

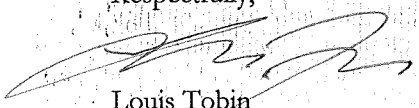
Other vague recommendations include:

- Recommendation one to "Establish a modified and modernized rehabilitative model of criminal sentencing." Based on the comments in the report, this appears to mean nothing more than expanded indeterminate sentencing, but it is impossible to tell. Expanded indeterminate sentencing might be fine if it included F3 offenses and more clarity in the calculation of the maximum sentence. But it is not clear why the recommendation wouldn't just state this outright. Instead, the recommendation zeroes in on creating a "rehabilitative model of criminal sentencing" when the purpose of criminal sentencing can and should be first to protect the public, second to punish the offender, AND third to rehabilitate the offender. The singular focus of this recommendation on rehabilitation to the exclusion of protecting the public and punishing the offender is concerning. But we don't know what the recommendation really means.

- Recommendation two that "Seriousness and recidivism factors... [should] be weighted to provide context and distinction to sentences." Weighted how?
- Recommendation five to "Modify consecutive sentence statutes to provide proportionality more effectively between similarly situated offenders." Again, there is no recommendation here other than to say that we should recommend something due to some undefined group of people *perceiving* a problem. The only hint at a recommendation, that this could perhaps mean providing for parole eligibility "after 18 years for non-homicide offenses and after 30 years for parole-eligible homicide offenses," lacks proportionality in its own right with every offender becoming parole eligible after the same length of time regardless of variation in the seriousness of the offenses, the number of offenses, or the criminal history that led to consecutive sentences to begin with.
- Recommendation six to "Expand responsibility of the parole system to implement the proposed indeterminate model of sentencing." It is not at all clear how this recommendation changes parole other than through the enactment of as yet to be determined "limitations on the parole board's discretion." How "limitations on the parole board's discretion" expands the responsibility of the parole system is confoundingly unclear.
- Recommendation seven to "Support the Commission's efforts to promote the adoption of uniform entry templates." Whether or not the judiciary adopts a uniform sentencing template is largely outside the purview of our Association but we are on record raising concerns with the proposed sentencing database to which the uniform sentencing entry now seems inextricably tied. We do not support this effort for reasons we have previously expressed.
- Recommendation nine to "Reorganize and simplify criminal statutes." Conceptually, this is fine as long as it doesn't result in defense bar/ODRC driven decriminalization that is advertised as "simplification," as was the case with many of the Criminal Justice Recodification Committee recommendations. Reorganizing and simplifying criminal statutes shouldn't mean sacrificing public safety and justice for the victims of crime. It is impossible to tell if that is what this recommendation ultimately means because there is no detail. Given the reference to the Criminal Justice Recodification Committee in the comments, however, we are skeptical.

We will withhold further comment on these recommendations until they are fleshed out but, it is worth a final note that the General Assembly just passed a 1000+ page criminal justice omnibus bill that has not even gone into effect and already here we are discussing the next wave of massive criminal justice reform. It is time to stop moving the target. Part of the reason for the complained of complexity of our Criminal Code is this constant churn that prevents anyone from figuring out whether what has been done is good or bad for public safety.

Respectfully,



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1/31/2023

Ohio Sentencing Commission
Care of Sarah Andrews, Director
65 S. Front Street, 5th Floor
Columbus, Ohio 43215-3431

Re: Felony Sentencing Report, 2022

Dear Ms. Andrews,

In 1990, in the midst of the nationwide crack epidemic, the Ohio Legislature established a criminal sentencing commission to study the then-utilized "rehabilitative model" of the Ohio criminal sentencing code which utilized "indeterminate sentencing" to determine the time a felon spent in prison. The regime was criticized for being "arbitrary," "confusing," and variously, 'dishonest.'[1] That commission completed its work and, by 1996, Ohio adopted what was then called, and what was for a time, "Truth in Sentencing."[2]

What "Truth in Sentencing" means is that the sentence a judge hands out to a criminal, and states in front of the victim in court, is the sentence that the criminal will serve. Ohioans wanted this honesty, and wanted the surety of knowing that a criminal would be sentenced by a judge they elect, and serve the sentence the elected judge handed down.

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[1] See Ohio Sentencing Commission Draft Executive summary, for instance. As will be discussed below, the regime also formed a delegation by the legislative and executive branches, of a central power of the judicial branch to the executive branch in violation of the separation of powers contained in the Ohio Constitution.

[2] While derisively referred to by the sentencing commission as no different than subsequent stimulant and opiate narcotics epidemics, the crack epidemic is distinguished by the unified, nationwide punitive public policy response it generated, and by the generational minimums of criminal activity that the broadly adopted punitive and incapacitative approach to criminal sentencing brought with it. Simply put, across the nation, the United States successfully incarcerated its way out of the crack epidemic and enjoyed the fruit of those successful policies for the next two decades.

Where judges failed to do this job, they could be replaced by the electorate with a more appropriate jurist. In this way, the judicial power remained in the judiciary[3], subject to electoral control, squarely outside the whims of the executive branch. Moreover, with truth in sentencing, crime rates in the state were driven to all-time lows.

Since the moment that the law came into effect in 1996 continuous and concentrated efforts have been made to dismantle truth in sentencing and return the previously-failed regime of deceiving victims in the courtroom[4] and misleading the public in news accounts, followed by administratively ushering felons out of the back door of the prison. Among the institutions central in the efforts to dismantle truth in sentencing was and remains the vestige Ohio Criminal Sentencing Commission. No longer staffed by individuals focused on public safety, the commission is now a committee of academic and government bureaucrats obsessed with the perceived monetary savings of loosing felons upon productive Ohioans.

While there were many adjustments to the law since House Bill 1 in 1996, the biggest occurred with John Kasich's 2011 House Bill 86. That bill did the following: reduced the criminality of felonies of the third degree from a five-year punishment to a three-year punishment, reduced the criminality of many felonies, instituted early (half-sentence) releases from prison for the worst offenders serving more than ten years, among many other errors in judgment. The bill was brought about within the bubble of a hubris created from generationally low crime and a fanfare marking the high watermark of libertarian influence at the Statehouse.

Follow-up legislation to House Bill 86 made alterations, such as the creation of numerous programs within the Ohio Department of Rehabilitation and Corrections to provide for the early release of felons while 'administratively' considering them confined, prohibiting imprisonment for nearly half of the crimes in the Ohio Revised Code in two-thirds of Ohio counties by means of a state funding bribery scheme (T-CAP), and most recently, permitting ODRC bureaucrats to demand Judges change their sentences.

Since John Kasich's 2011 decriminalization bill, crime rates in the state of Ohio have risen exponentially. His vision failed. Its proponents have been proven to be "unenlightened," in contrast to what lead supporter Representative Bill Seitz previously claimed.

In Ohio's most populous county, electoral shifts have instituted across-the-board progressive law enforcement changes, with deliberate down-charging of felonies, massive diversion programs, intervention in lieu of conviction followed by charge-dismissal for serial felons, a nearly complete elimination of punitive sanctions for offenses below felonies of the first or second degree, and transformation of probation and/or community control from a regime of supervision and control to a social services agency meant to benefit "clients" who happen to be repeat felons. Basically, the county has become a complete case-study in enacting the progressive criminal justice deforms proposed by "rehabilitation model" activists like the Ohio Criminal Sentencing Commission.

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[3] Ohio Const. Art. IV. Sec. 1.

[4] Which would, today, violation Ohio Const. Art I, Sec. 10a.

Predictably, homicides and crimes across the board have surged in that county, and despite (or because of) the progressive changes, leftist rioters felt free to loot and burn the city on a lark about criminal justice matters. Naturally and of a course with the narrative, charges against the looters were mostly dropped while charges against police officers for confronting the looters proceeded to trial, and Columbus's mayor arranged for a sue-and-settle consent decree with no adverse parties to be adopted by a leftist Southern District of Ohio federal judge.

To the electorate in the ruby-red state of Ohio, who have established Republican control of every state office, these outcomes and policies – while essentially unreported by the media – are shocking when they come to light. On one hand, Republicans run on being 'tough on crime,' and the public rewards that message, further backing it up with a 77% to 22% vote for being tough on bail. On the other hand, the Ohio legislature, entirely run by Republicans, continues to pass and consider bills that are weak on crime and treat criminals like social service applicants, and continues to fund progressive, liberal bureaucratic commissions like the Ohio Criminal Sentencing Commission.

The commission has responded to its legislative empowerment with draft proposals for the Ohio criminal code drawn directly from coastal cities and – as referenced on page 3 of the committee's draft report – the laughing-stock ultra-progressive failure of a prosecutor Larry Krasner from Philadelphia, who has single-handedly crafted policies which have brought the city of brotherly love to repeat double-digit yearly crime and homicide surges amongst a total collapse in daily standards of decency.

The reason for Ohio's republicans' seeming obsession with easing criminal penalties is transparent: money, and to a lesser extent, libertarians. It is expensive to hold dangerous people in prison. While, similarly, unless a case draws headlines that paint a straight-line back to the legislature, it costs the state government zero dollars and zero angst if another citizen is murdered, raped, or burglarized by a criminal who should be in prison.

Therefore, when considering myriad release and decriminalization proposals, the monetary savings of 'fewer prisoners' is easily quantified and spread-sheeted to the average legislator,[5] while the betrayal of individual citizens' safety and the denial of justice is ephemeral. The economic loss created by unsafe cities and destroyed neighborhoods, families, and born-addicted children are considered speculative.[6] It appears from the outside not to matter that the specific philosophical purpose of government being instituted amongst citizens is to provide for community security.

Not to be outdone, the Ohio Supreme Court has endeavored in this same direction, in its most recent term drafting a spree of progressive opinions, including one overturning the legislature's explicit instruction that life sentences for convicted murders are not subject to appeal, and creating a new, collateral attack on all non-death penalty felony sentences. State v. Weaver. In another case, the court – laughably – concluded that a judge was powerless to figure out if an offender lacked remorse when the

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[5] Indeed, the legislature has crafted an entire section of the revised code to provide for these exact spreadsheets. R.C. 5120.51.

[6] Or at least of sufficiently lesser concern that the legislature has not provided a section of the revised code to provide such data.

offender said he was "sorry" to the judge, and then upon hearing his sentence stated "fuck you man," "fuck your courtroom," and "you racist as fuck," among other outbursts. State v. Bryant.[7]

In this context, the now fully-progressive-captured Ohio Sentencing Commission has taken the opportunity to suggest Illinois-style adjustments to the Ohio criminal code. Starting with, in its first bullet-point, returning Ohio to the failed, pre-Truth-in-Sentencing criminal justice "rehabilitation model."[8] The commission did not waste time suggesting a return to the previous parole-board-as-judge sentencing model either, hitting those topics in points three and six. This approach is anathema to the commission's stated concern over transparency and understandability within Ohio's criminal justice system, but it does achieve simplicity.[9]

Specifically, the commission proposes replacing the judgment of judges with an unelected and unaccountable 'panel of experts' from the State to determine the sentence a criminal will actually serve, to make standardized, shallow, and dubious reporting requirements for all state judges so that the commission can use future data to compel reduced criminal sentencing severity in high-standards communities in order to mirror criminal justice approaches in low-standards, failed communities like the state's most populous county. Other proposals are aimed at reducing a state prison population that, under the current sentencing scheme, has consistently grown at a slower rate than the state population.

Least-common-denominator standards for human conduct are not a recipe for success for Ohio. Nor is a great exposition necessary concerning the folly of the commission's list of proposals, as they are already largely in place in the City of Columbus. And they are a disaster. The criminal justice system in Franklin County is so unserious that even the police will not bother to solve crimes or arrest criminals. House and car break-ins are met with no investigation, and the victims are being informed that nothing will happen anyway, so why bother with the inconvenience of waiting for the police, showing up on subpoenas to court sessions defendants never attend, or even making a report in the first place. No report, no crime, no statistic, declining "crime rate." This cannot be the supermajority-republican solution to crime.

The desire to foist this failed system onto the entire state might be understandable in terms of an unelected commission staffed by academics who view felons as a pet-project for personal improvement and a topic for politically-correct banter around the Capitol cocktail circuit, or of aged jurists who feel the tug of mercy at the end of a traumatic life spent meting out punishment. It is not understandable to the voting public, who view felons as dangerous threats to their peaceable lives and individuals who have earned and deserve justice both in the form of punishment for wrongs inflicted, and in the form of protection from future wrongs, by deterrence and incapacitation. Those are the people who have chosen to elect republicans to represent them on the promise that those republicans would be "tough on crime,"

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[7] The opinion even went on at length in a failed attempt to make rational and remorseful interpretations of the defendant's comments. The decision is a must-read for intellectual masochists.

[8] Of note, in the sentencing commission's summary of the reasons for truth in sentencing, the commission failed to mention the actual motivation for the law: the public's fury at lenient sentencing for dangerous criminals, and the sense of being lied-to about the sentence a criminal will actually serve.

[9] As there will be simply no way to know how long an offender will be incapacitated, and also no way to know how to hold any official accountable for their poor judgment in sentencing.

not that they would be 'servants to criminals,' or that they would 'lock arms with progressives and deliver crime bills opposed only by ... republicans.' [10]

The dichotomy in philosophy between criminal justice approaches is easily enough identified. If the commission cites sentencing fairness, there are two ways to achieve it – conservatively with mandatory sentencing standards and accountability, or progressively with reductions to the least common denominator and obfuscation. If the commission seeks to make Ohio sentencing less confusing and more easily understood by the public, there are two ways to achieve it – conservatively by openly stating a sentence and then carrying out that sentence, or progressively, by redefining all sentences as the province of a bureaucratic board that can't be known by anyone. If the commission seeks to address accountability to the electorate for sentencing, they have two options – the conservative way, by directing authority and accountability to locally elected officials, or the progressive way, by bloating up the State's largest bureaucracy with additional authority and staff, and burying sentencing determination within an unaccountable morass of pencil-pushing bean-counters all of whom live along the Columbus outer belt.

The sentencing commission goes on to lament the increase in average 'length-of-stay' for convicted felons without exploring the exhaustion faced by law enforcement, the courts, families, and communities tormented by multiple, multiple repeat felons who have traveled many times to the Department of Rehabilitation and Correction but who never come home rehabilitated.[11]

The criminal sentencing commission's draft report managed to choose at each point of policy divergence, the progressive policy. But Ohio is not a progressive state. Ohio is a conservative state, and becoming more conservative at that. Its suggestions should not only be dismissed, they should be utilized as a template of what <u>not</u> to do.

On that note, and in order to avoid the characterization of complaining about another's work while providing no solutions of one's own, this author has produced a complete proposal for legislative enactment to properly adjust Ohio's criminal statutes in a way that is less confusing, contains less secretive release policies, and is less prone to counter-elective interference,[12] but still safeguards the criminal code from the corrosive effect of the criminal apologist lobby. That proposal will be submitted for codification by the legislative service commission by this author's representatives in the coming weeks.

Respectfully,

John F. Litle III 0080598
Assistant Prosecuting Attorney
Muskingum County, Ohio

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[10] See, e.g., final vote on S.B. 288 in both the house and senate, unanimously supported by the party out of power, and opposed by at least some members, all of whom were republicans.

[11] For more on that topic, see Letter of Tobin to ODRC, attached Ex. 1.

[12] That is, telling the electorate that you are doing one thing, and then secretly interfering in a way that does the opposite.

OHIO PROSECUTING ATTORNEYS ASSOCIATION

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January 24, 2023

Director Annette Chambers-Smith
Department of Rehabilitation and Correction
4545 Fisher Road, Suite D
Columbus, OH 43228

RE: ODRC Public Officials Survey

Director Chambers-Smith –

Several weeks ago, ODRC shared a survey with our Association with the stated goal of assisting ODRC to "better communicate its mission, impact, and value to people across Ohio" and to help your agency "understand how ODRC is currently perceived and how [to] better communicate who [you] are and what [you] do."

These are laudable goals and I was optimistic that the survey would represent an effort by ODRC to gain some insight into what you do well, what you do poorly, and how and why prosecutors might have negative perceptions of those things. My optimism was short lived. Against my better judgment, but out of a sense of obligation, I shared the survey with Ohio's 88 county prosecuting attorneys despite being deeply disappointed at being asked to share a survey that was an unqualified waste of elected officials' time.

The survey, a copy of which I have included with this letter, asks perfunctory questions that do not remotely begin to reflect the nuanced situations that prosecutors face every single day in enforcing the law. Instead, the survey comes across as nothing more than an attempt to design a survey to paint a glowing picture of ODRC. Rather than any serious attempt at introspection about whether ODRC is helping to protect the public, punish offenders, and promote effective rehabilitation, the agency is apparently more interested in eliciting yes/no responses to questions like whether we "believe that people can change", "believe that people deserve a second chance", and "think that providing rehabilitative services to people in Ohio's prisons is a good investment for Ohio." The lack of room for nuance in these questions is absurd. *Some* people can change. *Some* people do deserve a second chance. Providing *effective and meaningful* rehabilitative services to people in Ohio's prisons could be a good investment. But the career criminal with a history of violent crime might not be able to change. The multiple murderer or child sex-offender might not deserve a second chance. And rehabilitative services are a poor investment if those services aren't reducing recidivism.

On a more basic level, the survey doesn't attempt to elicit information about whether you are accomplishing, or even viewed to be accomplishing, your own agency mission of reducing recidivism among those you touch. Instead, the survey asks what amounts to a loaded question about what percentage of individuals we think are returned to prison

Ex. 1

for committing a new crime. Never mind that this isn't reflective of the actual recidivism we see in our communities, or that the number of people "returned to prison" is artificial because of state policies that ODRC has in the past supported to ensure that it is difficult to send some felony offenders to prison at all, let alone to keep them there to serve out their sentence.

The ODRC Recidivism Report for 2021[1], the most recent recidivism report available as of this writing, reflects the following three things:

- The 3-year recidivism rate for individuals released from prison in 2016 was 32.69%, more than 5% higher than it was in 2011, the year House Bill 86 was enacted. See Figure 1.
- The 1-year, 2-year, and 3-year recidivism rates have increased every year since 2011. See Figure 5.
- The 3-year recidivism rate for individuals convicted of crimes against persons was 36.94%. See Figure 9. Nearly 7% higher than the 30% rate in the 2016 report that reflected the 3-year rate for individuals released in 2012.

Despite these troubling figures, the Executive Summary portion of the report paints a glowing picture of recidivism, stating that "[T]he 3-year recidivism rate for those who were returned to prison because of the commission of a new crime was…the lowest recidivism rate for new crimes in over 15 years."

Ultimately, my concern with the survey is that it is intended to provide more fodder for ODRC to paint an artificial picture of recidivism, of overwhelming support (without nuance) for thinking that people can change, of overwhelming support (without nuance) for giving people a second chance, and of overwhelming support for investment in providing rehabilitative services to people in Ohio's prisons regardless of whether those services are effective.

None of this reflects the reality of crime in our communities, a reality that is substantially different. According to reports from the Bureau of Justice Statistics, more than half (54.4%) of prisoners released from state prisons in 2012 had an arrest within 5 years that resulted in a conviction.[2] Nearly 69% of prisoners released from state prisons in 2008 had an arrest within 10 years that resulted in a conviction.[3] This is what recidivism really looks like. State policies and ODRC policies regarding who can be sent to prison, who gets out of prison early, and offender supervision contribute to this real recidivism. But the State turns a blind eye to this by making it more difficult to send people to prison and more difficult to keep them there, and then claiming to have successfully lowered recidivism rates when people who are released aren't "returned to prison" for a "new crime."

Perhaps stakeholder perceptions of ODRC would be better if the agency focused on helping us protect the public, incarcerating those who our elected officials think deserve to be in prison, and figuring out how to make the rehabilitative services you provide more meaningful and effective.

Respectfully,

Louis Tobin
Executive Director
F:\LouLetterChambers-SmithRESurvey011823

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[1] https://drc.ohio.gov/Portals/0/2021%20Final%20Report.pdf
[2] https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/rpr34s125yfup1217.pdf
[3] https://bjs.ojp.gov/BJS_PUB/rpr24s0810yfup0818/Web%20content/508%20compliant%20PDFs

EMAIL FEEDBACK
SENTENCING ROUNTABLE WORKGROUP DRAFT REPORT

Christopher Pagan

hi sara.

i am criminal defense lawyer in butler co.

my suggestion is to amend the PSI statutes to conform with practice realities and constitutional rules.

First, the PSI should be available to appellate counsel as a matter of course. presently, PSIs are viewed as confidential and special arrangements are required to go to the courthouse, obtain the PSI, read the PSI, and return it. contrast this with federal practice, where the PSI is immediately provided to appellate counsel as a critical document for sentencing. imo, appellate counsel cannot provide effective assistance without a PSI, which is often the only evidence for merger, to determine the support for consecutive sentences, and for restitution. each county has its own practices around PSIs. it is nonsensical to claim that appellate counsel should be denied the PSI to promote confidentiality.

Second, the PSIs should be supplied to trial counsel in a timely way so it can be examined with the client for accuracy. too often, the PSI shows up the day of sentencing with no time to read it, consider it, or challenge it. again, this is contrary to federal practice, where PSIs are administratively litigated with probation before they are presented to the trial court.

i cannot imagine these changes would be confidential. and i believe i could the OACDL behind them.

happy to discuss further, if needed. tx!

christopher J. pagan
repper-pagan law, ltd.
repperpagan.com
si se puede

Maureen David

My name is Maureen David, and I have been a public defender in Franklin County for 16 years, and was a public defender in Erie County for two years before that. I handle adult felony offenses, and previously handled adult misdemeanors. I've provided my thoughts on the Recommendations listed at the end of the 80-page report, as well as my thoughts and comments on Retired Judge Nichols' essay.

With Regard to the Summary of Recommendations:

2. Seriousness and Recidivism Factors: I like that these give the Judges a framework in making their decisions. If the intention is the encourage a Judge to provide more information on the record as to how much weight they give to each factor, great. I would not like to see the writers of the new Code (or even worse, the GA) dictate the weight or priority each given factor should receive.

3. Indeterminate sentencing: With Reagan Tokes being a prime example, I'm troubled by any indeterminate sentencing plan that is merely a fig leaf for the reality that it removes discretion from the judicial branch. A ***judge*** needs to be making any decisions as to the shortening or extension of a prison sentence, not the unelected and unscrutinized staff of the ODRC. A prisoner subject to these decisions needs the benefit of counsel when navigating these issues, and the only way counsel can be mandatorily appointed is via the court system, not a quasi-judicial ODRC review.

4. Definite minimum time: This is another concept I find troubling. I have had more than one client (usually a low-level drug offender, usually a girlfriend doing a favor for an ill-chosen boyfriend) get sent to ODRC on mandatory time, when no one—myself, prosecutor or judge—wanted to see that happen. Mandatory minimums again take the power away from judges and put them squarely in the hands of courtroom prosecutors, who have the discretion to charge, amend or dismiss counts or whole indictments. That is a guarantee of disparate and unfair punishment, as decisions like that can be affected by an individual prosecutor's temperament or an officewide policy in that county.

6. Parole board: My concern with the Parole Board taking a more active role in sentencing decisions is: who is ***on*** the Parole Board? How are those people selected? Is it a position subject to nepotism or other selective practices? Are the Board members accountable to anyone? Do they have any experience in incarceration, criminal psychology, AOD and Mental Health issues?

9. Reorganization of Criminal Statutes: I don't know enough about other models to make recommendations for a new structure to our Criminal Code. However, 1). However it is written, it needs a more user-friendly format. I would suggest an outline format, that allows quick reference to the pertinent sections. 2) A major problem with the Code is that in order to get a complete picture of the ramifications of a crime, one must refer to several statutes, some of which are not immediately evident. Some crimes have the sentencing parameters right there, while others require one to go to the sentencing code section. Some crimes have collateral consequences listed nowhere in the statute that are more impactful to the defendant that the charge itself. 3). And most important is the ***removal of all extraneous language from the statutes***-- all of the repetitive "if, then" sentences, all of the written out numbers, all of the lists (e.g. "offender is a teacher, administrator, coach, or other person in authority employed by or serving in an institution of higher education") in every single clause. Once is enough!

12. Drug epidemic: the recommendation states "there must be guidance from the GA and other state leaders regarding drug addiction"—given the Republican supermajority in the GA, with those legislators giving outsized influence to less populated and less diverse rural counties, I'm concerned that the GA's input is will be influenced more by political considerations (i.e. a desire for reelection) than any serious policy analysis using scientific data or forward-thinking restorative and therapeutic concepts.

I also had several thoughts with regard to Retired Judge Nichols' essay:

Page 48, para 2-3: I would agree that recent adjustments to the criminal code seem to have been "driven by costs rather than penological best practices". However, I do believe cost of administering this overburdensome system of rehabilitation and correction needs to be a major consideration in **what we choose to consider a crime** and what punishment we consider appropriate.

Pages 49-50: I appreciate that Judge Nichols noted the difference between Malum In Se and Malum Prohibitum. In rewriting the code, I would urge a cost/benefit analysis as to which and how many Malum Prohibitum offenses we codify, and how severe (i.e. costly to the taxpayer) the punishment must be. I think the pandemic showed us that the world did not stop when (mostly Municipal) courts minimized the burdens of more minor MP-type offenses, and we need to reexamine what purpose is served by charging, litigating and supervising these types of crimes.

Page 50, para 5: I'm curious where Judge Nichols gets the statistic that "serious crime rose 354%". Was this due to a more morally bankrupt populace, or because of an expansion of codified criminal charges, and the resulting explosion of arrests and indictments? Again, this would implicate the number and types of behavior we need to codify as criminal.

Page 51: "We were informed that determinate sentences disincentivized prisoners from engaging in rehabilitation"—is this a data-driven statistic (i.e. the rate of prisoner participation in programming)? If so, there are any number of factors that could play into that statistic (e.g. rules about only certain levels of classification allow prisoners to enroll in certain programs) that have nothing to do with a willingness or desire on the part of the prisoners to enroll.

Page 53, para 5-7: This dichotomy between the rural desire for "law and order" and the metropolitan preference for "rehabilitation" is a microcosm of the political view issues plaguing our state in many respects. This is a major roadblock for those rewriting the code. I don't know how those two things can be balanced in a single statewide Code, but it should be a major overarching consideration in the process going forward.

Page 57-60: It is evident that Judge Nichols is skeptical of the Specialty Docket model, ascribing dark motives to the Specialty Court in "cherry-picking" those more likely to succeed, and in favorably reporting its results. My response is this: Specialty Dockets ("SD") offer what is essentially an intensive Probation targeted to those offenders who are likely to benefit. They are there to differentiate between offenders who are criminally-minded and those who are brought into the system due to their circumstances (addiction, mental illness, etc.) As a defense attorney, if I think my client has a triable case, that is my first line of defense, enabling the system to work as intended. But if the case is one that needs to be resolved with a plea, an SD is a great place for my client to be supervised in an environment that provides them a) the support of fellow offenders and b) targeted attention from service providers

(including the Judge and Prosecutor). This helps them feel like human beings who can get well, not just Criminals who are now numbers in The System.

Judge Nichols characterizes an SD as "a court-like meta-theater wherein the Constitution has no role and defense counsel subordinate the duty they owe their clients in favor of helping them "get well". Far from it. As I noted, if a client does not have a triable case, they are ***going*** to be found guilty and put on court supervision. My duty to my client is to assist them through the system by ensuring their rights are protected. An SD is not meting out any extra-Constitutional punishment that isn't available to a Judge supervising a probationer, and with an SD the Judge knows more about the client's struggles and foibles to craft the appropriate penalty.

He also states "[f]ar from being the efficient, money-saving, life-changing panacea…drug courts bring more people under invasive court supervision" than with the traditional model. I would argue that without the option of an SD, a drug offender is more likely to be given a costly prison sentence-- either on the front end or as a probation violation later. And regardless of their ultimate success in "curing" an offender, SDs do not exist for that primary goal—if the State wants to engage is large-scale treatment of the addicted, it needs to massively fund both AOD and Mental Health services in this state. But an SD is there to reduce recidivism, and in that sense cannot help but be successful. Every defendant who is sifted out of the punishment and imprisonment model is a defendant gaining tools to cope with being a citizen out in the world. Any arguments that the cost of an SD outweighs the benefit ignores the fact that without an SD, those same defendants are being supervised by a probation department and imprisoned at much greater cost to the taxpayer than the relatively small cost (much of it grant-funded) of an SD.

Pages 65-66: Similarly, Judge Nichols is obviously of the opinion that drug use and abuse is a scourge to the community, relying on anecdotal evidence of crime data from several cities on the West Coast. Drug use and abuse ***is*** a scourge to the community, but one with so many overlying causes, symptoms and social factors that criminalization should be only a minor aspect of the solution. Judge Nichols speculates that without court-ordered treatment very few drug abusers will voluntarily engage in treatment—but if treatment were more widely available, affordable and operated nights and weekends, successful completion of programming would only increase. My experience with my clients is that they are not averse to treatment—the stumbling blocks are being able to consistently attend sessions during their workdays, the cost of sessions, and societal life stressors that lead them to cope in familiar ways (e.g. substance abuse). Court-ordered treatment also necessarily incurs all the attendant costs associated with charging, litigating and supervising these cases.

I am happy to provide further clarification or comment should the Committee wish to hear from me. Thank you for your time.

I neglected to mention something very important to me that was not specifically addressed in the report. I find the automatic life sentence penalties in certain sex offense cases to be extremely problematic. A client can be convicted of rape, et al. on ***no other evidence*** than the testimony of the prosecuting witness. As we know, jurors are always advised "one witness, if believed by you, is enough to convict if you are convinced beyond a reasonable doubt". But in ***no other crime with a life-tail*** would a Prosecutor go forward with a case where there was so little evidence. With a murder, there should be a body, shell casings, a weapon, DNA, a witness, etc. No client would be facing LWOP on just the testimony from A saying she witnessed B kill C. (Even on a lesser charge of any major import, a

Prosecutor would be wise to consider the strength of their case if one witness is the limit of their evidence.) And allegations of rape can be made ***years*** after the alleged crime occurred—thus limiting any expectation that there could be physical evidence like DNA. It also limits the client's ability to provide an alibi for the alleged time of the crime—especially when an indictment can list a range of time when the rape could have occurred, and the witness him or herself might not provide a specific time/place.

So in a sex case with a life-tail, my clients are frequently faced with a devil's choice: plead to a crime you didn't commit for the certainty of X years in prison and the joy of sex registration when you get out, or run the risk of life in prison for exercising your right to a trial. In any other case, our assessment (mine and my client's) of whether to plead or go to trial is based on the strength of the State's evidence. But in a life-tail sex case, the minimal (and sometimes questionable) evidence of one witness's testimony takes a back seat to extra-judicial considerations: is the prosecutor good in trial? Is the Judge a "prosecutor from the bench" and therefore unlikely to rule in our favor at trial? How vulnerable will the witness appear to a jury?

A mandatory life sentence in a case like this is contrary to the spirit of the Constitutional right to a trial. Choosing to risk life in prison to stand on your right to make the State prove its case when the State has such minimal evidence is not a fair choice. At first I thought this was something that the GA hadn't considered in writing the law, but I've come to believe it's a feature, not a bug. Defendants would exercise the right to trial more often, and there would be the possibility of an acquittal. Mandatory life puts a huge thumb on the scale in favor of the State in order to force a plea.

I know this is not directly responsive to the report, but in a universal revamping of the criminal code, this issue should be one change among many to be addressed.

Maureen David
Maureen David, Esq.
Staff Attorney

Franklin County Public Defender
373 S High St, 12th Floor
Columbus, OH 43215

David Painter, Commissioner Clermont County

Sara,

I thought the Sentencing Round Table Work Group and the Crafting Committee did an excellent job on this report. The meeting speakers did an excellent job explaining the report and providing needed clarification during the meeting. As during the meeting I have the following comments:

- Although I am in agreement with the Workgroup and the Commission recommendations as outlined in No. 12 of the report, I believe that the omission of opiate data could reduce the creditability of the report. I would suggest that the opiate epidemic was a causal factor in the rise in population of Ohio prisons in the years 2005 – present and therefore should be included in the report.
- Ohio inmates were not given the opportunity to participate in programs if the person had a sentence greater than 5 years. Only when the remainder of the sentence fell below the 5 year threshold were inmates allow to participate in programs. Therefore the release credits referenced did not materialize. This also was a direct factor to expanding Ohio's prison population due to times of stay being longer.
- Legislation is needed to further address nonviolent crimes. The need to remove the presumption of prison for Felony 4/5 drug crimes is way overdue. In addition addressing the presumption of prison, the allowance for expungement needs to be expanded for these type of crimes. Continuing a path of incarceration for substance abuse (mental illness) needs to be addressed.
- The use of consecutive sentences needs to be addressed. The limitation set in Oregon v. Ice, 555 U.S. 160 (2009) when crimes of the same conduct are committed preclude the issuance of consecutive sentences. In addition, possession of different labeled pills should not constitute separate charges.

Thanks for allow me to comment.

David Painter

Ken Rexford

My main concern as far as comments has to do with indeterminate sentencing, coupled with post-release control. My concern is the erosion of judicial review and favoring of executive branch power.

Historically, our country sees the three branches as distinct in a relationship with the People. The legislative branch reflects most directly the will of the People, with restrictions to protect minority interests from overreach by the majority. We see the judiciary as the neutral protector between all government branches and the citizen. We see the executive branch as the most necessary but least trusted, most feared.

In actual criminal litigation, the executive branch is the actual party opponent. Thus, the fear of the executive is stark. However, Ohio sentencing laws have moved more and more toward executive powers unrestrained by the judiciary.

Consider, for example, a person with a second-degree felony who is sentenced by a judge to a minimum sentence of two years. The judge has review powers over that sentence for two years, if the sentence is non-mandatory. Once the two years is up, the judge loses control over the citizen. Then, the executive branch takes over.

First, the executive branch, without judicial oversight, can extend the sentence to 3 years. Then, the executive branch can monitor the person for years on post-release control, with no judicial oversight of searches or sanctions. Sanctions can be up to an additional year, at least.

So, that original sentence of 2 years by a judge can in theory be extended by the executive branch, with no judicial oversight, for a net of double that original sentence (half before release, half after release), plus a period of supervision. The end result is that the executive branch has more than 50% of the say on how long the person serves, with no recourse to the judicial branch.

That seems antithetical to the entire structure of our State government. This report seems to recognize at least to a degree that problem but proposes solutions involving accountability of the executive branch to the legislative branch by way of more guidelines and procedures. That's not the best solution. The best solution is judicial oversight, in my opinion.

Thus, if I were to make recommendations on what to change in this regard, I would absolutely allow the citizen to appeal Reagan-Tokes decisions and Post-Release Control decisions to the trial court, and possibly up from there is warranted. Granted, that risks additional litigation and thus additional cost. The solution for costs is not to completely restructure sentencing decisions to allow the prosecutor-represented branch to pick half the sentence without review. The solution, if that process is too expensive, is to repeal Reagan Tokes and remove Post-Release Control from Ohio sentencing.

Do not get me wrong on this. I have many times raised serious challenges to judicial discretion during sentencing. I do not see judges as somehow immune from randomly disproportionate sentencing results. I get the need to reign in this problem. But, the solution of going to the executive branch boggles my mind. It is like asking for an instant replay during a football game where the review is conducted by the coach of the opposing team. Sure -- the ref might have screwed up, but that is NOT the solution that makes sense.

Dee Debenport

Respectfully Ma'am,

Felony sentencing in Franklin County is an oxymoron. We have a Franklin County Prosecutor that is physically and mentally incapable of trying cases. Reportedly, his staff has all but abandoned their posts. Alledgely, the office does not have a prosecutor that can sit in on life/death cases.

I'm sure this group is aware thst many many Franklin Co, and in particular Columbus, felonies have been reduced to the lowest possible level and many felonies have been dismissed. The lack of

prosecutorial accountability has no doubt abetted the pervasive lawlessness we are experiencing in Central Ohio.

I, and others surviving in Columbus would like to see prosecutors like Zach Klien and Gary Tyak held accountable for refusing to fulfill the duties of thier elected offices.

Revamping felony sentencing seems out of place at this time. A deep dive into the Columbus City and Franklin County Prosecutor Offices should take precedence over your current charge.

Regards,
Dee Debenport

Connect 2 Protect

Block Watch Coordinator

Southside Columbus

Heathe Hall

5 years is not enough!!

5 years for 2 cases of rape brought down to Sexual Battery.He still checks on the females through friends,Facebook,and apparently a private Investigator.. saying the rules do not apply to him.What parole does not know won't hurt them.He is due to get out in June 2023 but should be there longer since proof is on JPay messages and Recorded phone calls.

Everett Krueger

I finally got up the courage to read all 80 pages of the report. I commend you and your staff, members of the roundtable and Bob Nichols for the great effort to demonstrate the issues with our criminal justice system. Interestingly I took that same picture of the criminal code volumes as Judge Routson took. I used it in presentations I made. You were very wise to include such quality and knowledgeable folks in your roundtable. I was happy to see that Judge Nichol's mind is still working overtime. As always I was quite impressed by his presentation. I never was able to formulate such wisdom at my best of times and certainly not now.

I would hope that between the recodification group(which performed a yeoman's task) and your roundtable report, that some action would take place on a grand scale. I miss our discussions but am encouraged that you are still working at improving the system. I hope all is well with you and your family and that you don't ride your bike in the dark any longer.

Bill Shaul, MD

Dear Ms. Andrews,

I am responding to your call for public comment on the draft document “Felony Sentencing in Ohio”. First, I applaud the efforts of you and the committee to tackle this difficult issue. Ohio appears to have a greater disparity in sentencing for similar crimes than nearly any other state. This disparity is the glaring injustice that begs to be corrected. Secondly, while I respect the desire of many judges to retain discretion in sentencing, I firmly believe that it is possible for judges to retain such discretion, while still building some guard rails around sentencing that will significantly decrease much of the disparity. The urgent need for reducing the disparity is reflected by the difference between sentences handed down for Whites vs. Blacks for the same crimes. When judges wish to retain their discretion in sentencing and “go with their gut” as some have said, it too easily opens them to accusations of implicit racism, of which they not even be aware. Thirdly, this screams for a much more robust data collection system on sentencing for felonies that would include demographic information (including race), key details of criminal background (if any), and some qualitative measure of community/family support (see below). Such a data collection system exists in other states and would not have to be developed in Ohio *de novo.* Finally, there is a remarkably successful effort in about 20 states, called “Participatory Defense” that is briefly outlined in the following TED talk. This community effort pulls together a more realistic picture of a defendant’s life. That picture is presented to the judge at the time of sentencing with support from Public Defenders. If you watch it, you will see how such images of defendant's real life and degree of community support could alter the “gut level” impression of a defendant in front of them. It is for this reason, that I strongly urge you to put in place a robust objective data collection system that would also include some qualitative measure.

Thank you again for all the work you are doing on this.

Sincerely,
Bill Shaul, MD
Aurora, Ohio

Robin Harbage, FCAS, MAAA

Ms. Andrews,

Thank you for this opportunity to provide input on the report released by the Criminal Sentencing Commission.

In full disclosure, I was moved to review this report after listening to a presentation by Justice Donnelly on the history of sentencing in Ohio. As a professional statistician, I was immediately struck by the dearth of reliable data with which to judge the consistency of sentencing in the state and the potential bias in sentencing between jurisdictions and even between the sentences handed down by one judge to individuals of differing demographics who have committed similar crimes.

I applaud the recommendations of the Workgroup, but feel true accountability can only be obtained through a thorough, consistent and reliable database of demographics and sentencing data. I can only hope the current pilot data platform project being conducted in Summit County is quickly appraised and a consistent statewide database is created going forward. Your report would suggest that data on paroles and probations should also be tracked.

Regards,
Robin

Mary Ann Viveros

I recently learned that the commission has been reviewing Ohio's felony sentencing rules, which are confusing and resulting in widely varying sentences for similar crimes. It seems to result in ever-increasing prison populations with many people ending up in prison for very minor crimes or because of addictions for which they need treatment. I hope that any changes they make will address these problems and make information on sentences available to judges so they have guidelines for fair sentences that are similar for similar crimes. Thank you, Mary Ann Viveros

From: David Sheldon <david@davidsheldonlaw.net>
Sent: Monday, March 6, 2023 5:08 PM
To: Andrews, Sara <Sara.Andrews@sc.ohio.gov>
Subject: COMMENTS ON THE NEW SENTENCING PROPOSALS-OHIO SENTENCING COMMISSION

Dear Sara:

Please make these comments available to the sentencing commission.

I have been a practicing criminal defense attorney since 1988 when I first entered the practice of law as an assistant prosecuting attorney with the Cuyahoga County Prosecutor Office. I spent 7 years with Cuyahoga County and then another 4 ½ years with Medina County as a county prosecutor. Since that time, I have been in private practice defending individuals accused of criminal conduct. I have tried well over 150 jury trials in my career.

The proposal to enact legislation to make felony sentences of the first and second degree mandatory sentences is unnecessary and usurps the power of the judiciary to determine appropriate sentences on an individual basis. The Ohio legislature has already enacted mandatory sentences for certain crimes. This is sufficient to address the more serious crimes deserving of more serious punishment. Mandatory sentences take away the independence of our judiciary and the discretion our voters have placed in judges to make the right decisions when it comes to incarceration or probation. Judges are in the best position to weigh the principles and purposes of sentencing and the factors favoring imprisonment versus those against. Moreover, the presentence investigation provides an overall picture of the human being behind the crime and places in front of the judge the necessary information for him/her to make an informed decision about the appropriate sentence. To require anyone convicted of a felony of the first or second degree serve a mandatory prison sentence reduces the role of the judge and undermines the role of probation officers, victims of crime, law enforcement officers, and, most importantly, defense attorneys.

As an example, a first time offender is arrested for cultivating marijuana for having a grow operation in the basement of his home. There is a school within a 1000 feet of the defendant's house. The police execute a search warrant and find two hundred plants in various stages of growth. The net weight of all the marijuana is over 1000 grams but less than 5000 grams (there are 454 grams in a pound). This would normally be a felony of the third degree, but because it is within 1000 feet of a school, it becomes a felony of the second degree.

Under our current sentencing scheme, the defendant is facing a potential prison sentence of 2-3 years on the minimum to a maximum of 8-12 years on the maximum (under Reagan-Tokes). However, O.R.C. 2925.04(A)(C)(5)(d) specifically provides that R.C. 2929.13(C) applies for guidance on whether to impose a prison sentence. That section states:

> Except as provided in division (D), (E), (F), or (G) of this section, in determining whether to impose a prison term as a sanction for a felony of the third degree or a felony drug offense that is a violation of a provision of Chapter 2925. of the Revised Code and that is specified as being subject to this division for purposes of sentencing, the sentencing court shall comply with the purposes and principles of

sentencing under section 2929.11 of the Revised Code and with section 2929.12 of the Revised Code.

Thus, the current law allows the judge to consider all relevant factors, including the defendant's criminal history, family, employment, mental health, drug usage, etc., in determining the appropriate sentence. There may be several factors that mitigate against imprisonment. Those factors may outweigh the factors in favor of incarceration.

If the proposed legislation is enacted, the foregoing scenario is eliminated. The individual goes to prison. The judge's role is undermined, and the roles of law enforcement, the defense attorney, and the probation department are emasculated.

Mandatory imprisonment is not always the solution simply because the crime is a felony of the first or second degree. For felonies of the first degree, I have not seen many individuals escape imprisonment when the sentence is not mandatory. There is a presumption of imprisonment for felonies of the first and second degree except where otherwise specified (such as the above scenario).

SB2 significantly shifted the focus away from indeterminate sentences to definite sentences. Over the past ten years, the pendulum has begun to swing in the opposite direction. Our legislators seem more content to seek longer and mandatory prison sentences and further burden the criminal justice system.

Judges have enough difficulty wading through the minutiae of today's criminal code (just look at R.C. 2929.14!) to be faced with new legislation that weakens their role and forces them to expand their voluminous knowledge by digesting more complex and unnecessary laws.

Don't try to fix something that isn't broken.

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EXECUTIVE SUMMARY

On the 25TH anniversary of the passage of Senate Bill 2 (SB 2), the "Truth in Sentencing" bill, the Ohio Criminal Sentencing Commission conducted a roundtable discussion led by Reginald Wilkinson, EdD. This roundtable discussion prompted the creation of an ad hoc group, Sentencing Roundtable Workgroup (Workgroup). The goal of the workgroup was to examine the sentencing system in Ohio and develop recommendations to improve the clarity and reduce the complexity of felony sentencing. After the Workgroup met for over the course of a year, a crafting or drafting Committee met several times to develop recommendations to the Workgroup and the Commission.

The Workgroup studied rehabilitative, retributive, restorative, and therapeutic sentencing and reached a consensus that a modified and modernized rehabilitative model, utilizing indeterminate sentences, probation and parole would best promote the objectives of the purposes and principles of sentencing. And consequently, developed recommendations consistent with the Commission's vision to enhance justice and its mission to ensure fair sentencing in the State of Ohio:

1. **Establish a modified and modernized rehabilitative model of criminal sentencing.**
2. **Seriousness and recidivism factors, contained in R.C. 2929.12[1], to be weighted to provide context and distinction to sentences.**
3. **Expand indeterminate sentencing to apply to felonies of the third degree and eliminate the bifurcated structure of felonies of the third degree.**
4. **Implement a definite minimum time that a prisoner must serve before release options become available.**
5. **Modify consecutive sentence statutes to provide proportionality more effectively between similarly situated offenders.**
6. **Increase role of the Parole Board in order to implement indeterminate sentencing and statutorily guide the board's discretion with oversight and accountability.**
7. **Support the Commission's efforts to promote the adoption of uniform entry templates.**
8. **Standardize Presentence Investigation Reports.[2]**
9. **Reorganize and simplify criminal statutes.**
10. **Authorize an existing agency or create one to act as a clearing house for professional notifications.**
11. **Expand the use of, and resources for, prosecutor diversion programs and specialized dockets.[3]**
12. **The drug epidemic in Ohio needs special attention to ultimately address a solution.**

Commented [DW1]: Rewrote title as using expanded role and limited discretion seemed to cause confusion. Also, dropped system and made Parole Board.

[1] R.C. 2929.12

[2] With adequate resources, it would be ideal for a PSI to be prepared for all defendants, but those PSIs that are prepared should be uniform in appearance and the information they contain.

[3] With a judges increased participation in treatment options canonical issues may arise and judges should be mindful of those potential issues.

SENTENCING ROUNDTABLE WORKGROUP REPORT & RECOMMENDATIONS

Presented December 15, 2022

I. INTRODUCTION AND OVERVIEW OF CRIMINAL SENTENCING IN OHIO

Felony sentencing in Ohio has become a highly complex procedure that is perceived to produce disparate results of similarly situated defendants. On the 25TH anniversary of the passage of Senate Bill 2 (SB 2), the "Truth in Sentencing" bill, the Ohio Criminal Sentencing Commission conducted a roundtable discussion led by Reginald Wilkinson, EdD. This roundtable discussion prompted the creation of an ad hoc group, Sentencing Roundtable Workgroup (Workgroup). The goal of the workgroup was to examine the sentencing system in Ohio and develop recommendations to improve the clarity and reduce the complexity of felony sentencing. These recommendations were created consistent with the Commission's vision to enhance justice and its mission to ensure fair sentencing in the State of Ohio.

In light of SB288 just having been passed, why should we be doing this? The changes that are made in SB288 are not changes to the fundamental structure and scheme of sentencing in Ohio. Based on the amount of work it will take to prepare these recommendations, the time to begin the process is now.

The Workgroup exercised due diligence in studying and reviewing sentencing options, listening to presentations on best practices, considering expert opinions, studying sentencing practices in other states, and examining deficiencies in Ohio's present sentencing structure. The Workgroup studied rehabilitative, retributive, and restorative models of sentencing and reached a consensus that a modified and modernized rehabilitative model, utilizing indeterminate sentences, probation and parole would best promote the objectives of the purposes and principles of sentencing.

The General Assembly created the Sentencing Commission in 1990 as part of SB258. The Commission is directed to develop a sentencing policy that enhances public safety by achieving certainty in sentencing, deterrence, and a reasonable use of correctional facilities, programs, and services.[4] Additionally, the sentencing policy shall be designed to achieve fairness in sentencing. The Commission was also directed to evaluate the effectiveness of the sentencing structure of the state.[5] After over 25 years of modifying and amending SB2's sentencing structure, the Commission recognizes that it is time for an overhaul of Ohio's criminal sentencing structure starting with sentencing policy.

What follows is a simplified and brief explanation of sentencing, but under current law the hearing is much more involved and complex.

> *After a defendant is convicted by plea or trial, the court conducts a sentencing hearing. At the sentencing hearing the judge will hear from the prosecutor, the victim or victims, the defense attorney, and the defendant. The judge will consider the purposes and principles of sentencing*

[4] R.C. 181.23(B)
[5] R.C. 181.23(A)(1)

pursuant to Revised Code (R.C.) 2929.11 as well as consider and weigh the factors regarding seriousness and recidivism pursuant to R.C. 2929.12.

The sentencing judge must also give notices and consider numerous other statutory requirements, such as mandatory sentences, prison presumption, merger, sex offender registration, and many more. The judge will then impose a sentence; that sentence may include community control, prison, fines, restitution, driver's license suspension, mandatory time for specifications, and several other sentencing options.

Once the judge has determined the sentence, a litany of notices must be given to the defendant prior to imposition of the sentence. At the conclusion of the sentencing hearing the defendant may be taken or retained in custody or may begin any community sanction that has been imposed. For a view of the complexity of sentencing in Ohio please see the Felony Sentencing Quick Reference Guide, prepared by the Ohio Sentencing Commission and available on the Commissions website.

The purposes and principles of sentencing as enumerated in R.C. 2929.11 best state the sentencing rationale that should be applied in Ohio: protect the public from future crime by the offender and others, punish the offender, and promote rehabilitation by applying incapacitation, deterrence, and restitution. Sentences are required to be commensurate with and not demeaning to the seriousness of the offender's conduct and its impact upon the victim and must be consistent with the sentences of similarly situated defendants. Combining those purposes and principles with the seriousness and recidivism factors enumerated in R.C. 2929.12 provides the sentencing courts with guidance to make qualitative judgments based on relevant factors to exercise informed discretion in sentencing.

Ohio and most of the nation was operating under a rehabilitative model from 1884 to 1996. Under that model, judges had broad and unfettered discretion to impose sentences intended to both punish and rehabilitate convicted offenders. Prison sentences were indeterminate to provide time in which to treat and rehabilitate the offender. Under a rehabilitative model, offenders are incentivized to participate in and successfully complete rehabilitative programming while incarcerated. When eligible, a parole board periodically reviews these offenders progress and allows for earlier release if sufficient rehabilitation is demonstrated. In return, society benefits from successful reentry, reduced recidivism rates, and a decrease in the financial burdens associated with criminality.

Despite the long tenure of the rehabilitative model, calls for retributive reform began in the early 1990s. The legislature in Ohio responded with the adoption of a "truth in sentencing" scheme. Known as Senate Bill 2, this new sentencing model became effective July 1, 1996. The legislation established a type of determinate sentencing structure, called a presumptive system, that required minimum sentences with judicial discretion from a range of possible punishments. Retributive sentencing was the model upon which SB2 was based. Retributive sentencing focuses solely on punishing the offender for the wrong that was committed.

The restorative justice sentencing model is an additional sentencing scheme that has been adopted in the United States that emphasizes compensation and reconciliation between victims and

offenders. A restorative model focuses less on punishment and more on the proportionality of the sentence imposed. Some restorative concepts are usually implemented in both retributive and rehabilitative models of sentencing, such as victim impact panels.

III. SUMMARY OF RECOMMENDATIONS

Criminal sentencing in Ohio needs to be restructured to achieve fair, proportional, congruent sentencing that is predictable, consistent, and deterrent which incorporates the reasonable use of correction facilities, programs and services.

The recommendations presented here are purposefully general – a first step in what will likely be a long, arduous process to achieve, within constitutional lanes, the application of the fair and equitable application of the law in a manner that objectively promotes public confidence, maintains social order, and respects matters of liberty. Further, it is understood each recommendation must be fully vetted, evaluated, and its details developed – we hope that this report, recommendations, and our effort to seek public engagement will drive long term, meaningful change to improve the clarity and reduce the complexity of felony sentencing in Ohio.

Implementation of each recommendation and the adoption of a modernized and modified rehabilitative model, that utilizes indefinite sentences, probation, and parole, is necessary to create a fair and effective criminal justice system. The adoption of a rehabilitative model of sentencing would meet these goals and would allow for the just punishment of offenders while providing tangible incentives for robust and meaningful rehabilitation.

As has been codified in 2929.11, there are three overriding purposes of felony sentencing:

1. To protect the public from future crime by the offender and others,
2. To punish the offender,
3. To promote the effective rehabilitation of the offender using the minimum sanctions that the court determines accomplish those purposes without imposing an unnecessary burden on state or local government resources.

Commented [DW2]: Added to mention again that we are keeping these purposes in mind in all discussions. These are mentioned in the Executive Summary as well.

Each of the recommendations below are made with the intent to remain consistent with the overriding purposes of felony sentencing and should be read in that context.

1. Establish a modified and modernized rehabilitative scheme of criminal sentencing.

Prior to the passage of SB2 (known as the "Truth in Sentencing" bill) in 1996, Ohio operated under an indefinite sentencing scheme. That sentencing scheme suffered from a number of problems. The scheme came to be viewed as lacking clarity, limited access to rehabilitation programs, limited oversight of the Parole Board, lengthy delays and high recidivism rates. In addition, prison overcrowding was a strain on Ohio resources. As a result of these problems, Ohio moved away from indefinite sentencing.

In 2019, the General Assembly reimplemented broader indefinite sentencing through the passage of SB201, the Reagan Tokes Act. With this reimplementation, the legislature created formulas for the sentencing judge to use to determine the range of the indefinite sentence. The indefinite sentence is added on to the sentence that the judge imposes on the underlying count, the Department of Rehabilitation and Correction (DRC) holds a hearing to extend the sentence up

to the maximum as determined by the formula. For example, if the defendant received an 8-year sentence on an applicable count, then the formula would determine that an additional 4 years would be imposed so that the defendant would be serving a sentence of 8 to 12 years. In this example, at the conclusion of the 8-year sentence, DRC holds a hearing to rebut the presumption of release and if they find it appropriate may extend the prison sentence.

The Workgroup studied, considered and discussed various ways to implement an indefinite sentencing scheme. The ultimate recommendation of a modified and modernized rehabilitative model, is not to reimplement the pre-1996 scheme, nor to extend the Reagan Tokes Model, but rather to implement a scheme that fixes the problems from the pre-1996 scheme while also providing a more streamlined and straightforward sentencing structure than what currently exists after the Reagan Tokes law passed.

To modify and modernized a rehabilitative scheme, the ranges of the current felony offenses must be analyzed to determine if they enable a sentencing court and DRC to effectively rehabilitate the offender while preserving public safety. As it currently stands, there are 5 levels of felonies in Ohio, plus unclassified felonies:

Felony Level	Prison Term
Unclassified Felony	Indeterminate Life Sentence – Agg Murder, Murder, Human Trafficking, and certain sex offenses and crimes with sexual motivation
F-1	3,4,5,6,7,8,9,10, or 11 years
F-2	2,3,4,5,6,7, or 8 years
F-3	9,12,18,24,30, or 36 months OR 12,18,24,30,36,42,48,54, or 60 months
F-4	6,7,8,9,10,11,12,13,14,15,16,17, or 18 months
F-5	6,7,8,9,10,11, or 12 months

Commented [DW3]:
The levels of felony offenses would be broken down into more than 5 levels of offense. Within each level of offense the range of prison would be narrowed. As an example:
F1 = 5 years - 11 years (Currently 3-11)
F2 = 4 years - 8 years (Currently 2-8)
F3 = 3 years - 5 years (currently 1-5 years, or 9 to 36 months
F4 = 2 years - 4 years (currently 6 to 18 months)
F5 = 18 months – 3 years (Currently 6 to 12 months)
F6 = 12 months to 18 months
F7 = 6 months to 12 months

In this current system, there is broad discretion within each felony level. As the ranges are analyzed, some of the decisions that need to be made are whether to narrow the range within each level, to create more levels, or some other way to define the possible punishment within the felony scheme.

Correcting the vary broad ranges that could be imposed in the pre-1996 scheme, goes a long way in correcting the problems that were encountered. With more, narrower ranges the court still has discretion to tailor the punishment to the particular offender. But, the narrower range helps in maintaining consistency and predictability. Predictability is beneficial to both the defendant and the victim, in cases where there is a victim.

While the addition of more felony ranges, would arguably be a complication, the reality is that with more felony levels, but with narrower ranges, the scheme is more straightforward in its implementation and similarly situated defendants are more likely to get similar penalties.

In keeping with the purposes and principles of sentencing, the narrow and more focused ranges will allow judges to exercise discretion and impose similar sentences rather than uniform sentences. The ultimate goal of the scheme is to not dictate what sentences a judge should impose but to make the sentences that are imposed meet the purposes and principles of sentencing, wherever and in front of whomever the defendant is sentenced.

2. Seriousness and recidivism factors, contained in R.C. 2929.12, to be weighted to provide context and distinction to sentences.

The seriousness and recidivism factors listed in R.C. 2929.12, advise the court of considerations that should be made prior to imposing sentence upon an offender. The list of factors are both aggravating factors as well as mitigating factors. The factors give great guidance to sentencing decisions and provide context or distinction to sentences.

Under current law, the sentencing judge has to consider the factors, but does not have to expressly state which factors were considered or what importance was given to those factors. The judge may list what factors were considered specifically or the judge can make a more general pronouncement of all factors listed in 2929.12 were considered.

Under this recommendation, the judge would need to indicate the factors considered and some statement of how they were weighed in determining the appropriate sentence.

Listed below are additional possible ways to weigh the factors:

Legislature to assign values to the factors and the trial court judge would indicate which factors were considered in establishing the sentencing range. The legislature could also give guidance to the trial court in directing the sentencing judge to give weight to the factors that the judge finds, in this way the judge decides what values to give to the different factors.

Make meaningfully guided discretion for imposing terms. Work out during the vetting process exactly what that means and what the judge must do and include in the sentencing entry.

3. Expand indeterminate sentencing to apply to felonies of the third degree and eliminate the bifurcated structure of felonies of the third degree.

Felonies of the third degree are currently excluded from the indeterminate model introduced by the passage of SB201. By including these offenses, the benefits of the indeterminate structure will apply to offenses which currently carry up to five years in prison. The benefits include incentivizing good behavior

and participation in rehabilitative programs through opportunities for release and ensuring that unrehabilitated offenders remain incarcerated.

Under current law, the felonies of the third degree are bifurcated. Certain offenses carry up to 36 months in prison while other offenses carry up to 60 months. As part of the expansion of indeterminate sentencing, third degree felonies should be punishable by up to 60 months in prison. The offenses that are currently classified as felonies of the third degree will need to be analyzed and reclassified between the felony of the fourth-degree level and felony of the third-degree level.

If the number of offense levels are expanded, then this will have to take place. But, as the expanded offense levels are analyzed it must be determined whether to keep the statutory guidance regarding presumptions for and against prison. Under current law, the legislature has been expanding F3 offenses that carry a presumption for prison.

4. Implement a definite minimum time that a prisoner must serve before release options become available.

Currently there are a dozen or so options for a prisoner to be released from prison prior to the completion of the prison sentence. By implementing a definite minimum time, the indeterminate sentencing model will maintain the "Truth in Sentencing" ambitions of SB2. The definite minimum time is set by the judge from the ranges available for the felony committed, a felony of the first or second degree, and no release options are available to the defendant until that time has been served.

For clarification, this is not a mandatory minimum that is set by statute for all defendants. Instead, the sentencing judge would exercise discretion in choosing a minimum time within the statutory range that the defendant would be required to serve. Thus preserving the "Truth in Sentencing" notion of SB2 (1996).

Additionally, the release options available today should be evaluated for function, utility, overlap, and clarity – ultimately, there should be fewer, more meaningful release options. By reforming the release options, the effect of the definite minimum must also be kept in mind. The combination of definite minimum and meaningful release options within the framework of the indeterminate sentencing scheme will allow judges to tailor sentencing to the needs of the defendant, the safety of the public as well as meeting all of the purposes and principles of sentencing. In some cases, the defendant will need to be locked away for a lengthy amount of time, which will also protect the public.

RELEASE MECHANISM	STATUTE	Statutorily Ineligible Offenders*
80% Court Release	2967.19	Offenders serving a stated prison term that includes a disqualifying prison term or a stated prison term that consists solely of one or more restricting prison terms.
Intensive Program Prisons	2929.14; 5120.032	Offenders serving a prison term for an enumerated ineligible category offense.

Commented [DW4]: Appendix B - more specific information

Judicial Release	2929.20	Offenders serving a stated prison term that is mandatory. Offenders serving a stated prison term for any enumerated felony offense committed while the person held a public office in this state.
Medical Release	2967.05	Offenders serving: a death sentence, a sentence of life without parole, a sentence as a sexually violent predator for an offense that is a felony of the first or second degree, a sentence for aggravated murder or murder, a mandatory prison term for an offense of violence, or a mandatory prison term for any specification under R.C. 2941.
Overcrowding	2967.18	Offenders serving a prison term for an enumerated offense or offense category, a prison term for an offender who is serving a prison term for an offense committed while the offender had a firearm, or a prison term or term of life imprisonment without parole pursuant to a sentence under the sexually violent predator specification. Any offender who was denied parole or judicial release during the term of imprisonment the offender is currently serving.
Pardons/Clemency	2967.03	N/A
Parole	2967.13	Offenders serving a prison term or term of life imprisonment without parole.
Risk Reduction	2929.143/5120.036	Offenders serving a sentence for an enumerated offense or offense category, or a sentence that consists solely of one or more mandatory prison terms. Offenders that do not agree to cooperate with an assessment and offenders that do not agree to participate in programming.
Shock Probation/Parole	2947.061/2967.31	Only applicable to offenses committed prior to 1996. Statutes have been repealed.
Transitional Control	2967.26	Offenders serving a mandatory prison term (until after the expiration of the mandatory term), or a prison term or term of life imprisonment without parole.
Earned Credit	2967.193	Offenders sentenced to death or serving a prison term or term of life imprisonment for aggravated murder, murder, or a conspiracy or attempt to commit, or complicity in committing, aggravated murder or murder, offenders serving a sentence of life imprisonment without parole for aggravated murder or a sexually violent predator specification, or offenders serving a sentence for a sexually oriented offense. See below for more information.
Earned Reduction of Minimum Term	2967.271	Offenders serving a non-life felony indefinite prison term for a sexually oriented offense.
Substance Abuse Disorder Treatment	5120.035	Offenders serving a prison term for an offense of violence or a felony of the first or second degree, offenders without a substance use disorder, offenders with more than twelve months remaining to be served, offenders serving a prison term other than a prison term for a felony of the third, fourth, or fifth degree that is not an offense of violence, offenders under the age of eighteen, offenders showing signs of drug or alcohol withdrawal and who require medical detoxification, offenders who are physically and mentally incapable of uninterrupted participation in the substance use disorder treatment program.

Shock Incarceration	5120.031	Offenders serving a prison term for an enumerated ineligible category offense under 5120.032 (i.e., same ineligibility restrictions as Intensive Program Prisons).
Death of inmate		
Expiration of Prison Term		

*Ineligible offenders means those offenders who are never eligible for release under each respective release mechanism. Certain restrictions may still apply for an offender to be considered for release as an eligible offender.

Note: See 2929.13 for enumerated offenses that are, except as otherwise provided in the code, not eligible for *any* court approved early release mechanism.

Note: See 2929.14 for specific prison terms that are not eligible for *any* early release mechanism.

5. Modify consecutive sentence statutes to provide proportionality more effectively between similarly situated offenders.

A sentencing court must make certain findings before it may impose a consecutive sentence. Pursuant to R.C. 2929.14(C)(4)[6] the court must find that the consecutive sentence is necessary to protect the public or to punish the offender AND not disproportionate to the seriousness of the offenders conduct and to the danger the offender poses to the public. Additionally, the court must find one of the following:

1. Crimes committed while awaiting trial/sentencing, under sanction, or under post-release control; or
2. Two or more of the multiple offenses committed as a single course of conduct and the harm so great or unusual that a single term does not adequately reflect the seriousness of the conduct; or
3. Offender's criminal history shows that consecutive terms are needed to protect the public.

Members of the Workgroup discussed ways to reform consecutive sentencing. There is a perception that consecutive sentencing in Ohio is applied inconsistently between similarly situated offenders. Modification to consecutive sentencing guidance would allow parole eligibility for offenders after serving a specified time of the total prison term imposed. Parole eligibility does not mean granting of parole, just that the defendant could apply for parole consideration or hearing. As an example of what could be proposed, make the offender eligible to apply for parole consideration after 18 years for non-homicide offenses and 30 years for parole eligible homicide offenses. Shortly after the passage of SB2, 2929.41(E) was repealed. This code section provided for an aggregate minimum term of fifteen years, plus the sum of all three year terms of actual incarceration imposed pursuant to 2929.71 and the sum of all six year terms of actual incarceration imposed pursuant to 2929.72, when consecutive prison is imposed for felonies other than aggravated murder or murder.

Commented [DW5]: Discuss Gwynne? Supreme Court ruling that court is to consider aggregate of consecutive sentence as well.

Commented [DW6R5]: The consecutive findings are not simply threshold findings that, once made, permit any amount of consecutively stacked individual sentences. Rather, these findings must be made in consideration of the aggregate term to be imposed.

Commented [DW7R5]: Motion for reconsideration filed January 3, 2023

[6] R.C. 2929.14(C)(4)

6. Increase role of the Parole Board in order to implement indeterminate sentencing and statutorily guide the board's discretion with oversight and accountability.

Commented [DW8]: Rewrote title as using expanded role and limited discretion seemed to cause confusion. Also, dropped system and made Parole Board.

An effective parole board is a necessary component of indeterminate sentencing. Criticisms of the parole board under the previous rehabilitative model included inconsistent and unpredictable practices resulting in disparate or incongruent decisions which undermined public confidence in the ability of the justice system to protect the public. Currently, the parole board hears cases of prisoners that have indeterminate sentences or violations prior to the enactment of SB2 and life sentences imposed after SB2 and HB86. The parole board does not hear cases under the Reagan Tokes Law.

With the expansive indeterminate model of sentencing being proposed, the parole board will help accomplish the goals of rehabilitation. Enacting statutory limitations on the parole board's discretion with oversight and accountability will help to dispel criticism and achieve transparency. The parole board will also hear input from victim, prosecutor, defense attorney and other interested parties as guided by statute.

An active, transparent, and focused parole system supplements and strengthens the rehabilitative incentives of the indeterminate model of sentencing and ultimately restores the confidence of the public while ensuring public safety. The Parole Board must find evidence that the defendant is no longer a threat to society.

7. Support the Commission's efforts to promote the adoption of uniform entry templates.

The value of statewide uniform entry templates that a court regularly uses cannot be overstated. The greatest value in the use of these uniform entry templates is through a web-based application, currently a pilot project of the Commission – the Ohio Sentencing Data Platform (OSDP).[7] Expanding the use of these uniform entry templates and the web-based platform ensures courts always have the most recent requirements, either based on statute or case law, in their entries and improves system efficiency. The uniform entry templates also create a standardize language across the State for sentencing. The Court speaks through its entry. If all courts are using the uniform entry templates, they will all be speaking the same language which will, among other things, promote confidence in the system and (hopefully) improve understanding of the exceedingly complex sentencing structure. In addition to speaking the same language, the Court will have the ability to generate accurate, up-to-date, and comprehensive entries. The uniform entry templates are created as part of the entry generation portal. The entry generation portal reduces the burden of creating the uniform entries.

The Commission, as part of the work being done for the OSDP, is also in the process of digitizing the entirety of the criminal code in Ohio in collaboration with the Ohio Judicial Conference and the Ohio Legislative Services Commission. The effort is partially funded through a Bureau of Justice Assistance grant awarded to the Commission by the Office of Criminal Justice Services, Ohio Department of Public Safety. The Ohio Criminal Offense Code portal will be a game-changer for criminal justice collaboration,

[7] https://www.ohiosentencingdata.info/

communication, and information sharing in Ohio – a non-proprietary, accessible digitized version of the Ohio Revised Code.

The Ohio Criminal Offense Code portal will enable approved software to receive up-to-date, accurate, and comprehensive information about the criminal offense code to ensure that all systems that support the criminal justice process are documenting the felony criminal offense codes accurately and consistently. In other words, it will be a standardized, comprehensive presentation of criminal code sections which will create a common language to allow interagency connectivity – law enforcement, prosecutors, clerks, courts, probation departments, corrections departments, or any other agency that uses the Revised Code in their day-to-day operations.

8. Standardize Presentence Investigation Reports.[8]

Currently in the State of Ohio, presentence investigations (PSI) are only required when the sentencing court is going to place the defendant on community control.[9] Additionally, there is no standard to which the written report must adhere. The Committee discussed the value of a standardized presentence report. Much like the uniform entry templates, a standardized PSI would create a common language across the State that would better communicate what is occurring and the information considered in sentencing. Creating a standardized PSI allows courts to utilize their resources in implementing rehabilitation more effectively. It also permits courts to utilize staff more efficiently in terms of the presentence investigation and the writing of the report. As part of the standardizing process, the report will contain sufficient information to be considered a thorough background and investigation of the defendant and the offense.

If the Commission is charged with facilitating the creation of a standardized PSI, the Commission has experience with this type of work as it created the Uniform Entry Templates. This puts the Commission in a unique position to complete such a project.

9. Reorganize and simplify criminal statutes.

The criminal code should be simplified for the purpose of making it easier to understand and administer. Shortly after the enactment of SB2, the General Assembly began passing changes to the law. Individually, each change seems logical enough. However, collectively, these changes have resulted in compounding complexities and significant cost increases. These separate changes are commonly made to satisfy individual interest groups, not as the product of careful public policy analyses. Simplifying the criminal code will reduce errors in sentencing and make the process easier for defendants, victims, practitioners, and the public to understand. Any simplification of the code adds to the transparency of the criminal justice system.

Reorganizing and simplifying the code does not involve decriminalization or increasing punishment of existing crimes. Instead, the process would be to bring uniformity to the way the code sections are

[8] With adequate resources, it would be ideal for a PSI to be prepared for all defendants, but those PSIs that are prepared should be uniform in appearance and the information they contain.

[9] R.C. 2951.03(A)(1)

written, to find redundancies and consolidate similar code sections. In addition, standardizing definitions and including those that are missing that are not the same as standard English meaning. (Minimum and Mandatory) Also, using language that is clear and concise, i.e. Probation instead of Community Control.

Commented [DW9]: Dropped references to the Recod committee as that seemed to suggest that we would incorporate those changes that "decriminalize or increase criminalization."

Administrative notifications add a tremendous amount of time and complication to the sentencing process. Does a defendant who is facing multiple life sentences appreciate the Sex Offender Registration and Notification process that is taking place? After the defendant receives that sentence, is that the best time to then discuss registration? There are numerous registrations that can be removed from the sentencing hearing itself and placed in more appropriate settings with a better manner of communication.

Criminal Codes are made stronger by review and analysis of proposed changes prior to enactment – like the process used for bill analysis by the Ohio Legislative Services Commission. Currently, though, there isn't a dedicated process for analysis of specific criminal justice or sentencing impact and the Commission's existing R.C. 181.25(A)(3) duty to review and analyze introduced legislation is underutilized. The Criminal Sentencing Commission is in a unique position with the expertise to conduct such analysis. The Commission should be expressly authorized to review potential legislation. As part of this review, the Commission should determine if the existing code already covers the proposed legislation and should ensure there is internal consistency of definitions and language. This work would be done in consultation with other appropriate agencies, such as the Legislative Services Commission.

Just a few examples:

Unconstitutional Code (Fixed):

2907.05(C)(2)(a) – Gross Sexual Imposition – SB288 removed (a) and combined (b) into (C)(2), therefore no longer mandatory prison when evidence other than victim testimony. [State v. Bevly]

Code with issues:

2739.03(G) refers to 2739.99(H) – but 2739.99 only has subsections (A) through (E)

4717.26(F)(1) – SHOULD THERE BE A "NO" BEFORE CREMATORY

(F)(1) crematory facility shall remove any dental gold, body parts, organs, or other items of value from a dead human body prior to the cremation or from the cremated remains after cremation unless the cremation authorization form authorizing the cremation of the decedent executed under section 4717.21 or 4717.24 of the Revised Code specifically authorizes the removal thereof.

10. Authorize an existing agency or create one to act as a clearing house for professional notifications.

Members of the Workgroup discussed the burden to prosecutors' offices of the formal notifications they are required to provide regarding defendants who hold professional licenses. Statutory amendments should be made to allow the prosecutor to notify a central source of arrest or indictment, and it would then be the obligation of this central source to track the case and inform applicable licensing agencies of any restrictions to that license due to those charges.

11. Expand the use of, and resources for, prosecutor diversion programs and specialized dockets.[10]

Utilization of prosecutor diversion serves as an appropriate and effective mechanism to divert low-level offenders from trial or plea and potential incarceration. The enabling statutes for prosecutor diversion programs are broad in authority. However, there is not a consistent adoption of these programs from county to county. Expanding resources and increasing knowledge to county prosecutors, would greatly help the intent and effect these programs would have on low-level, non-violent offenders.

Specialized dockets, also known as problem solving courts, create an avenue of diversion through drug, alcohol, mental health, veteran, and reentry program emphasis. These programs employ holistic restorative and therapeutic qualities to help guide defendants through recovery and successful exit from the criminal justice system. Research, analysis, and evaluation of the specialized docket programs could inform recommendations regarding participation, resources, and support of these rehabilitation efforts.

Currently, the Ohio Judicial Conference (OJC) and Ohio State Bar Association (OSBA) are hoping to achieve statewide concurrent jurisdiction for specialized dockets.

Commented [DW10]: Language for Concurrent Jurisdiction below Appendix A

12. The drug epidemic in Ohio needs special attention to ultimately implement a solution.

Commented [DW11]: Instead of address

The Workgroup acknowledged that drug offenses are a recurring debate for reform while also recognizing the practical reality that the comprehensive review of the laws guiding drug prosecutions and the resources that can be directed to combating the drug problem in Ohio would consume the totality of its work. However, should the proposed recommendations in this report be supported, they will provide Ohio courts with more options for dealing with drug offenders, which is one step (of many) toward long term resolution.

Before any comprehensive look at Ohio's drug statutes is conducted, there must be guidance from the General Assembly and other state leaders regarding drug addiction; for instance, is it a public health concern, a criminal offense, or mental health issue? Once we know more about and understand how to categorize or define drug addiction, then we can begin to address the consequences of relapse, how community supervision should operate, and what type of facilities or treatment options are best suited for programming or monitoring drug offenders.

[10] With a judges increased participation in treatment options canonical issues may arise and judges should be mindful of those potential issues.

APPENDIX A

Sec. 1901.186

(A) As used in this section:

(1) "Felony sex offense" has the same meaning as in section 2967.28 of the Revised Code.
(2) "Offense of violence" has the same meaning as in section 2901.01 of the Revised Code.
(3) "Informant" means a person who is assisting a law enforcement agency in a criminal investigation by purchasing controlled substances from others in return for compensation from the law enforcement agency.
(4) “Specialized docket” means a particular session of court that offers a therapeutically oriented judicial approach to providing court supervision and appropriate treatment to individuals that includes the following:

(a) All treatment courts or programs tied to either substance use or mental health issues;

(b) All courts or programs dedicated to human trafficking survivors, military veterans, family dependency, impaired drivers, domestic violence offenders, and individuals returning to the community after being released from prison.

(B) In addition to all other jurisdictions granted a municipal court in this chapter, except as provided in division (C) of this section, ~~the Tiffin-Fostoria municipal court~~ a municipal court may exercise ~~has~~ concurrent jurisdiction with the ~~Seneca~~ county court of common pleas in the county where the municipal court is located or, if the municipal court's territorial jurisdiction under section 1901.02 of the Revised Code includes more than one county, with the court of common pleas of any county served by the municipal court in ~~all~~ a criminal action~~s~~ or proceeding~~s~~ ~~to which both~~ if either of the following apply:

(1) The court finds that the offender's addiction to a drug of abuse was the primary factor leading to the offender's commission of the offense charged.

~~(2) The~~ and the offender is admitted to participate in ~~the participating in victory of transition (PIVOT) drug recovery program~~ a drug addiction recovery program operated by either court.
(2) The court has entered a memorandum of understanding with the court of common pleas establishing concurrent jurisdiction for all specialized dockets, with the agreement of all judges presiding over or referring cases to the dockets.

(C) ~~The Tiffin-Fostoria~~ A municipal court does not have concurrent jurisdiction with the ~~Seneca county~~ court of common pleas in a criminal action or proceeding under a drug addiction recovery program when any of the following applies:

(1) The defendant is not a resident of ~~Seneca county~~ the county served by the court of common pleas or a resident of the municipal corporation served by the municipal court that is servicing the county.
(2) The defendant is charged with a felony offense of violence.
(3) The defendant is charged with a felony sex offense or has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code.
(4) The defendant is charged with a felony violation of section 2925.04 or 2925.041 of the Revised Code.
~~(5) The defendant is under a community control sanction or post-release control sanction imposed by another court or is on parole or probation under the supervision of another jurisdiction.~~
(6) Criminal proceedings are pending against the defendant for a felony offense in another jurisdiction.
(7) The defendant is serving a prison term imposed by another court.
(8) The defendant is engaged as an informant for a law enforcement agency.

(D) ~~The concurrent jurisdiction granted by this section shall expire five years after the effective date of this section, unless renewed or made permanent by the general assembly prior to its expiration.~~ If the defendant violates the terms and conditions of participation in the program or fails to complete the program, the defendant shall be referred back to the court in which the criminal complaint, indictment, or information was originally filed.

APPENDIX B

80% Court Release – Ineligible Offenders

2967.19 (A)(2) "Disqualifying prison term" means any of the following:

(a) A prison term imposed for aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, kidnapping, rape, aggravated arson, aggravated burglary, or aggravated robbery;

(b) A prison term imposed for complicity in, an attempt to commit, or conspiracy to commit any offense listed in division (A)(2)(a) of this section;

(c) A prison term of life imprisonment, including any term of life imprisonment that has parole eligibility;

(d) A prison term imposed for any felony other than carrying a concealed weapon an essential element of which is any conduct or failure to act expressly involving any deadly weapon or dangerous ordnance;

(e) A prison term imposed for any violation of section 2925.03 of the Revised Code that is a felony of the first or second degree;

(f) A prison term imposed for engaging in a pattern of corrupt activity in violation of section 2923.32 of the Revised Code;

(g) A prison term imposed pursuant to section 2971.03 of the Revised Code;

(h) A prison term imposed for any sexually oriented offense.

2967.19 (A)(4) “Restricting prison term” means any of the following:

(a) A mandatory prison term imposed under division (B)(1)(a), (B)(1)(c), (B)(1)(f), (B)(1)(g), (B)(2), or (B)(7) of section 2929.14 of the Revised Code for a specification of the type described in that division;

(b) In the case of an offender who has been sentenced to a mandatory prison term for a specification of the type described in division (A)(4)(a) of this section, the prison term imposed for the felony offense for which the specification was stated at the end of the body of the indictment, count in the indictment, or information charging the offense;

(c) A prison term imposed for trafficking in persons;

(d) A prison term imposed for any offense that is described in division (A)(4)(d)(i) of this section if division (A)(4)(d)(ii) of this section applies to the offender:

(i) The offense is a felony of the first or second degree that is an offense of violence and that is not described in division (A)(2)(a) or (b) of this section, an attempt to commit a felony of the first or second degree that is an offense of violence and that is not described in division (A)(2)(a) or (b) of this section if the attempt is a felony of the first or second degree, or an offense under an existing or former law of this state, another state, or the United States that is or was substantially equivalent to any other offense described in this division.

(ii) The offender previously was convicted of or pleaded guilty to any offense listed in division (A)(2) or (A)(4)(d)(i) of this section.

Intensive Program Prisons and Shock Incarceration – Ineligible Offenders

5120.032(2) A prisoner who is in any of the following categories is not eligible to participate in an intensive program prison…:

(a) The prisoner is serving a prison term for aggravated murder, murder, or a felony of the first or second degree or a comparable offense under the law in effect prior to July 1, 1996, or the prisoner previously has been imprisoned for aggravated murder, murder, or a felony of the first or second degree or a comparable offense under the law in effect prior to July 1, 1996.

(b) The prisoner is serving a mandatory prison term, as defined in section 2929.01 of the Revised Code.

(c) The prisoner is serving a prison term for a felony of the third, fourth, or fifth degree that either is a sex offense, an offense betraying public trust, or an offense in which the prisoner caused or attempted to cause actual physical harm to a person, the prisoner is serving a prison term for a comparable offense under the law in effect prior to July 1, 1996, or the prisoner previously has been imprisoned for an offense of that type or a comparable offense under the law in effect prior to July 1, 1996.

(d) The prisoner is serving a mandatory prison term in prison for a third or fourth degree felony OVI offense, as defined in section 2929.01 of the Revised Code, that was imposed pursuant to division (G)(2) of section 2929.13 of the Revised Code.

Judicial Release – Ineligible Offenders

2929.20(A)(1)(a): “eligible offender” means any person who…is serving a stated prison term that includes one or more nonmandatory prison terms

2929.20(A)(1)(b) "Eligible offender" does not include any person who, on or after April 7, 2009, is serving a stated prison term for any of the following criminal offenses that was a felony and was committed while the person held a public office in this state:

(i) A violation of section 2921.02, 2921.03, 2921.05, 2921.31, 2921.32, 2921.41, 2921.42, or 2923.32 of the Revised Code;

(ii) A violation of section 2913.42, 2921.04, 2921.11, or 2921.12 of the Revised Code, when the conduct constituting the violation was related to the duties of the offender's public office or to the offender's actions as a public official holding that public office;

(iii) A violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially equivalent to any violation listed in division (A)(1)(b)(i) of this section;
(iv) A violation of an existing or former municipal ordinance or law of this or any other state or the United States that is substantially equivalent to any violation listed in division (A)(1)(b)(ii) of this section, when the conduct constituting the violation was related to the duties of the offender's public office or to the offender's actions as a public official holding that public office;
(v) A conspiracy to commit, attempt to commit, or complicity in committing any offense listed in division (A)(1)(b)(i) or described in division (A)(1)(b)(iii) of this section;
(vi) A conspiracy to commit, attempt to commit, or complicity in committing any offense listed in division (A)(1)(b)(ii) or described in division (A)(1)(b)(iv) of this section, if the conduct constituting the offense that was the subject of the conspiracy, that would have constituted the offense attempted, or constituting the offense in which the offender was complicit was or would have been related to the duties of the offender's public office or to the offender's actions as a public official holding that public office.

Medical Release – Ineligible Offenders

2967.05(C) No inmate is eligible for release under this section if the inmate is serving a death sentence, a sentence of life without parole, a sentence under Chapter 2971. of the Revised Code for a felony of the first or second degree, a sentence for aggravated murder or murder, or a mandatory prison term for an offense of violence or any specification described in Chapter 2941. of the Revised Code.

Overcrowding Release – Ineligible Offenders

2967.18(E)(1) No reduction of sentence pursuant to division (B) of this section shall be granted to any of the following:

(a) A person who is serving a term of imprisonment for aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, felonious assault, kidnapping, rape, aggravated arson, aggravated robbery, or any other offense punishable by life imprisonment or by an indefinite term of a specified number of years to life, or for conspiracy in, complicity in, or attempt to commit any of those offenses;
(b) A person who is serving a term of imprisonment for any felony other than carrying a concealed weapon that was committed while the person had a firearm, as defined in section 2923.11 of the Revised Code, on or about the offender's person or under the offender's control;
(c) A person who is serving a term of imprisonment for a violation of section 2925.03 of the Revised Code;
(d) A person who is serving a term of imprisonment for engaging in a pattern of corrupt activity;
(e) A person who is serving a prison term or term of life imprisonment without parole imposed pursuant to section 2971.03 of the Revised Code;
(f) A person who was denied parole or release pursuant to section 2929.20 of the Revised Code during the term of imprisonment the person currently is serving.

Risk Reduction Release – Eligibility Requirements

2929.143 (A) When a court sentences an offender who is convicted of a felony to a term of incarceration in a state correctional institution, the court may recommend that the offender serve a risk reduction sentence under section 5120.036 of the Revised Code if the court determines that a risk reduction sentence is appropriate, and all of the following apply:

(1) The offense for which the offender is being sentenced is not aggravated murder, murder, complicity in committing aggravated murder or murder, an offense of violence that is a felony of the first or second degree, a sexually oriented offense, or an attempt or conspiracy to commit or complicity in committing

any offense otherwise identified in this division if the attempt, conspiracy, or complicity is a felony of the first or second degree.
(2) The offender's sentence to the term of incarceration does not consist solely of one or more mandatory prison terms.
(3) The offender agrees to cooperate with an assessment of the offender's needs and risk of reoffending that the department of rehabilitation and correction conducts under section 5120.036 of the Revised Code.
(4) The offender agrees to participate in any programming or treatment that the department of rehabilitation and correction orders to address any issues raised in the assessment described in division (A)(3) of this section.

Earned Credit Release

2967.193(C) No person confined in a state correctional institution or placed in a substance use disorder treatment program to whom any of the following applies shall be awarded any days of credit under division (A) of this section:

(1) The person is serving a prison term that section 2929.13 or section 2929.14 of the Revised Code specifies cannot be reduced pursuant to this section or this chapter or is serving a sentence for which section 2967.13 or division (B) of section 2929.143 of the Revised Code specifies that the person is not entitled to any earned credit under this section.
(2) The person is sentenced to death or is serving a prison term or a term of life imprisonment for aggravated murder, murder, or a conspiracy or attempt to commit, or complicity in committing, aggravated murder or murder.
(3) The person is serving a sentence of life imprisonment without parole imposed pursuant to section 2929.03 or 2929.06 of the Revised Code, a prison term or a term of life imprisonment without parole imposed pursuant to section 2971.03 of the Revised Code, or a sentence for a sexually oriented offense that was committed on or after September 30, 2011.

Take aways from the Sentencing Roundtable Workgroup

March 6, 2023 Meeting

- **Future Sentencing Roundtable Workgroup Meeting – (April) – National Perspective**
- **Incorporate presentations and ODRC Data from Dr. Brian Martin into the report.**
- **Probation versus Community Control.**
- **Research best practices of rehabilitative models.**
- **What does meaningfully guided discretion mean for imposing prison terms, evaluate the weighing of factors and how best to implement that process.**
- **Analyze F3s.**
- **Discuss presumptions for and against prison.**
- **Identify ways that consecutive sentences are operating in the current system.**
- **Identify ways to apply consecutive sentences in a consistent manner.**
- **Identify how the pre-1996 parole board operated and how the recommendations will prevent the criticism that it faced.**
- **Start developing the Parole Board guidance statutes.**
- **Continue the work on the OSDP and bringing in more judges.**
- **Continue the development of the Offense Code Portal.**
- **Look at previous work standardizing PSIs and gathering samples.**
- **Review code sections for redundancies, consolidation and standardization.**
- **Establish review mechanism that Commission will engage in.**
- **Research agency notices and the process for making those notices.**
- **Work with existing agencies to streamline process of notifications.**
- **Expand information on prosecutor diversion.**
- **Gather more information from the specialized docket section of the Supreme Court.**
- **More research on the drug epidemic – example of opposing viewpoints below:**

March 2018 More Imprisonment Does Not Reduce State Drug Problems, Article.

Viewpoint – No. The United States did not incarcerate its way out of the crack epidemic. As a result of the tough on crime and war on drugs the United States ended up with one of the highest incarceration rates in the world. This approach had devastating consequences for families and communities, creating a cycle of poverty and criminalization that has persisted to this day.

Incarceration rates did eventually decline in the late 2000s and early 2010s, this was due more to changes in public policy and opinion than to any significant reduction in drug use or crime. Many experts argue that mass incarceration has not only failed to solve the crack epidemic but has actually made the problem worse by perpetuating the social and economic conditions that drive drug use and addiction.

September 16, 2015 The Truth about Mass Incarceration Article

Viewpoint – As Fordham law professor John Pfaff has shown, more than half of the extra prisoners added in the 1980s, 1990s, and 2000s were imprisoned for violent crimes; two thirds were in

for violent or property crimes. Only about a fifth of prison inmates are incarcerated for drug offenses, and only a sliver of those are in for marijuana. Moreover, many of these incarcerated drug offenders have prior convictions for violent crimes. The median state prisoner serves roughly two years before being released; three quarters are released within roughly six years.

For the last several decades, arrest rates as a percentage of crimes — including drug arrests — have been basically flat, as have sentence lengths. What has driven prison populations, Pfaff proves convincingly, is that arrests are far more likely to result in felony charges: Twenty years ago, only three eighths of arrests resulted in felony charges, but today more than half do. Over the past few decades, prosecutors have grown tougher and more consistent.